



COUNCIL CHAMBERS

17555 PEAK AVENUE MORGAN HILL CALIFORNIA 95037

COUNCIL MEMBERS	REDEVELOPMENT AGENCY
Dennis Kennedy, Mayor	Dennis Kennedy, Chair
Greg Sellers, Mayor Pro Tempore	Greg Sellers, Vice-Chair
Larry Carr, Council Member	Larry Carr, Agency Member
Hedy Chang, Council Member	Hedy Chang, Agency Member
Steve Tate, Council Member	Steve Tate, Agency Member

WEDNESDAY, SEPTEMBER 1, 2004

AGENDA

JOINT MEETING

CITY COUNCIL SPECIAL AND REGULAR MEETING

and

REDEVELOPMENT AGENCY SPECIAL MEETING

6:00 P.M.

A Special Meeting of the City Council and Redevelopment Agency is Called at 6:00 P.M. for the Purpose of Conducting Closed Sessions.

Dennis Kennedy, Mayor/Chairman

CALL TO ORDER

(Mayor/Chairperson Kennedy)

ROLL CALL ATTENDANCE

(City Clerk/Agency Secretary Torrez)

DECLARATION OF POSTING OF AGENDA

Per Government Code 54954.2

(City Clerk/Agency Secretary Torrez)

6:00 P.M.

City Council Action and Redevelopment Agency Action

CLOSED SESSION:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 4

2.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code section 54956.9(a)
Case Name: Klaver v. City of Morgan Hill
Case Number: WCAB SJO 241834; San Jose Board
Attendees: City Manager, City Attorney, Human Resources Director

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

RECONVENE

CLOSED SESSION ANNOUNCEMENT

7:00 P.M.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORT

Council Member Tate

CITY COUNCIL SUB-COMMITTEE REPORTS

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PUBLIC COMMENT

NOW IS THE TIME FOR COMMENTS FROM THE PUBLIC REGARDING ITEMS NOT ON THIS AGENDA.

(See notice attached to the end of this agenda.)

PUBLIC COMMENTS ON ITEMS APPEARING ON THIS AGENDA WILL BE TAKEN AT THE TIME

**THE ITEM IS ADDRESSED BY THE COUNCIL. PLEASE COMPLETE A SPEAKER CARD AND
PRESENT IT TO THE CITY CLERK.**
(See notice attached to the end of this agenda.)

**PLEASE SUBMIT WRITTEN CORRESPONDENCE TO THE CITY CLERK/AGENCY SECRETARY. THE
CITY CLERK/AGENCY SECRETARY WILL FORWARD CORRESPONDENCE TO THE CITY
COUNCIL/REDEVELOPMENT AGENCY.**

City Council Action

CONSENT CALENDAR:

ITEMS 1-14 The Consent Calendar may be acted upon with one motion, a second and the vote, by each respective Agency. The Consent Calendar items are of a routine or generally uncontested nature and may be acted upon with one motion. Pursuant to Section 5.1 of the City Council Rules of Conduct, any member of the Council or public may request to have an item pulled from the Consent Calendar to be acted upon individually.

Time Estimate

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Consent Calendar: 1 - 10 Minutes

1. **EXTENSION OF SUBDIVISION IMPROVEMENT AGREEMENT – ALCINI PARTNERSHIP** 1
Recommended Action(s): Grant Limited Amendment to Subdivision Improvement Agreement (Without Splitting of Bonds).
2. **EXTENSION OF MILLER NETWORKS CONTRACT** 17
Recommended Action(s): Authorize the City Manager to Execute the Agreement, Subject to Review and Approval by City Attorney.
3. **RESPONSE TO SANTA CLARA COUNTY GRAND JURY REPORT “INQUIRY INTO POLICE EVIDENCE ROOMS IN SANTA CLARA COUNTY”** 21
Recommended Action(s): Direct Staff to Provide the Responses Described in the Staff Report to the 2003-2004 Santa Clara County Grand Jury.
4. **RESPONSE TO SANTA CLARA COUNTY GRAND JURY REPORT “INQUIRY INTO FINANCIAL AND PERFORMANCE AUDITS FOR THE COUNTY AND CITIES IN THE COUNTY”** 35
Recommended Action(s): Direct Staff to Provide the Proposed Response to the 2003-2004 Grand Jury Concerning Their Final Report “Inquiry into Financial and Performance Audits for the County and Cities in the County”.
5. **FINAL MAP APPROVAL FOR VIALE (TRACT 9589)** 49
Recommended Action(s):
 1. **Approve** the Final Map, Subdivision Agreement and Improvement Plans;
 2. **Authorize** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and
 3. **Authorize** the Recordation of the Map and the Subdivision Improvement Agreement following Recordation of the Development Improvement Agreement.

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	Consent Calendar: 1 - 10 Minutes	
6.	<u>FINAL MAP APPROVAL FOR CAPRIANO, PHASE II (TRACT 9617)</u>	61
	<u>Recommended Action(s):</u>	
	1. <u>Approve</u> the Final Map, Subdivision Agreement and Improvement Plans;	
	2. <u>Authorize</u> the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and	
	3. <u>Authorize</u> the Recordation of the Map and the Subdivision Improvement Agreement following Recordation of the Development Improvement Agreement.	
7.	<u>FINAL MAP APPROVAL FOR MISSION RANCH, PHASE VII (TRACT 9602)</u>	73
	<u>Recommended Action(s):</u>	
	1. <u>Approve</u> the Final Map, Subdivision Agreement and Improvement Plans;	
	2. <u>Authorize</u> the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and	
	3. <u>Authorize</u> the Recordation of the Map and the Subdivision Improvement Agreement following Recordation of the Development Improvement Agreement.	
8.	<u>AWARD OF PROFESSIONAL SERVICES CONTRACT TO PREPARE PROJECT STUDY REPORT/PROJECT REPORT (PSR/PR) FOR THE HIGHWAY 101/TENNANT AVENUE INTERCHANGE PROJECT</u>	85
	<u>Recommended Action(s):</u> <u>Authorize</u> the City Manager to Execute a Consultant Agreement with Mark Thomas & Company, Inc. for the Preparation of a Project Study Report/Project Report (PSR/PR), including all Environmental Studies and Geometric Alignments Necessary to begin the Process for the Highway 101/Tennant Avenue Interchange Project, Subject to Review and Approval by the City Attorney.	
9.	<u>PURCHASE OF PHOTOCOPIERS</u>	95
	<u>Recommended Action(s):</u>	
	1. <u>Authorize</u> the Purchase of Four New Copiers through Rabbit Office Automation, Subject to City Attorney Review and Approval of Contract;	
	2. <u>Declare</u> the Three Existing Copiers as Surplus, and Authorize Disposal by the Purchasing Officer; and	
	3. <u>Approve</u> \$8,947 in Additional Appropriations from the Public Facilities Non-AB1600 Fund, and \$24,341 in Additional Appropriations from General Fund Reserves.	
10.	<u>ADOPT ORDINANCE NO. 1690, NEW SERIES</u>	101
	<u>Recommended Action(s):</u> <u>Waive</u> the Reading, and <u>Adopt</u> Ordinance No. 1690, New Series, and <u>Declare</u> That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1660, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-12: PEET – LUPINE INVESTORS/BORELLO (APNS 728-34-002 & -003).	
11.	<u>ADOPT ORDINANCE NO. 1691, NEW SERIES</u>	113
	<u>Recommended Action(s):</u> <u>Waive</u> the Reading, and <u>Adopt</u> Ordinance No. 1691, New Series, and <u>Declare</u> That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1658, NEW SERIES, TO AMEND DEVELOPMENT AGREEMENT DA-03-13 FOR APPLICATION MP 02-15: MISSION VIEW-MISSION RANCH TO ALLOW FOR THE INCORPORATION OF 22 SUPPLEMENTAL BUILDING ALLOCATIONS AWARDED IN THE 2003 RDCS COMPETITION. (APN 728-32-008 & 009).	

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12.	<u>ADOPT ORDINANCE NO. 1692, NEW SERIES</u>	119
	<u>Recommended Action(s):</u> <u>Waive</u> the Reading, and <u>Adopt</u> Ordinance No. 1692, New Series, and <u>Declare</u> That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 18.24 (CENTRAL COMMERCIAL/ RESIDENTIAL DISTRICT) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-04: CITY OF MORGAN HILL-TEXT AMENDMENT/CC-R).	
13.	<u>ADOPT ORDINANCE NO. 1693, NEW SERIES</u>	129
	<u>Recommended Action(s):</u> <u>Waive</u> the Reading, and <u>Adopt</u> Ordinance No. 1693, New Series, and <u>Declare</u> That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 9.04.010(A) (Discharge-Permit Required-Fee) OF CHAPTER 9.04 (WEAPONS) AND ENACTING CHAPTER 9.06 (IMITATION WEAPONS) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING PROHIBITION OF IMITATION WEAPONS.	
14.	<u>APPROVE SPECIAL CITY COUNCIL MEETING MINUTES FOR AUGUST 18, 2004</u>	135
15.	<u>APPROVE SPECIAL CITY COUNCIL MEETING MINUTES FOR AUGUST 25, 2004</u>	137
16.	<u>APPROVE SPECIAL CITY COUNCIL MEETING MINUTES FOR AUGUST 25, 2004 COYOTE VALLEY SPECIFIC PLAN WORKSHOP</u>	139

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

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17.	<u>APPROVE JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR AUGUST 18, 2004</u>	141
18.	<u>APPROVE JOINT REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES FOR AUGUST 25, 2004</u>	173

Redevelopment Agency Action

CONSENT CALENDAR:

ITEM 19

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Consent Calendar: 1 - 10 Minutes

19. **MORGAN HILL DOWNTOWN ASSOCIATION (MHDA) REQUEST FOR PROPERTY BASED IMPROVEMENT DISTRICT (PBID) FUNDING** 179
Recommended Action(s): Authorize the Executive Director to Negotiate and Execute a Loan Agreement, Subject to Agency General Counsel Review and Approval, with the Morgan Hill Downtown Association (MHDA) in an Amount not to Exceed \$40,000 for Consulting Services Needed to Assist with the Formation of a Property Based Improvement District (PBID).

City Council Action

PUBLIC HEARINGS:

Time Estimate **Page**

20. **5 Minutes** **ZONING AMENDMENT, ZA-04-07: DIGITAL-VENTURE PROFESSIONAL CENTER** (Continued from 8/18/04).....181
Public Hearing Opened.
Please Limit Your Remarks to 3 Minutes. Public Hearing Closed
Council Discussion.
Action- **Motion to Waive** the First and Second Reading of Ordinance.
Action- **Motion to Introduce** Ordinance by Title Only. (Roll Call Vote)
21. **5 Minutes** **ANNEXATION APPLICATION, ANX-03-02: DEWITT-MARRAD**189
Public Hearing Opened.
Please Limit Your Remarks to 3 Minutes. Public Hearing Closed
Council Discussion.
Action- **Adopt** Resolution Approving Annexation.

City Council Action

OTHER BUSINESS:

Time Estimate **Page**

22. **10 Minutes** **WATER CONSERVATION PLANNING ACTIVITIES**203
Recommended Action(s): Provide Direction to Staff.
23. **10 Minutes** **REPORT OF THE LEGISLATIVE SUBCOMMITTEE**207
Recommended Action(s): Consider a Report and Recommendations of the Council's Legislative Subcommittee which will be Presented at the Council Meeting.

City Council and Redevelopment Agency Action

OTHER BUSINESS:

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24.	5 Minutes	<u>REVIEW OF CITY COUNCIL AND REDEVELOPMENT AGENCY'S NOVEMBER, DECEMBER, AND JANUARY MEETING SCHEDULE</u> <u>Recommended Action(s): Discussion</u> and <u>Direction</u> Regarding the November, December and January Meeting Schedule.	209

FUTURE COUNCIL-INITIATED AGENDA ITEMS:

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

ADJOURNMENT



CITY COUNCIL STAFF REPORT

MEETING DATE: *September 1, 2004*

EXTENSION OF SUBDIVISION IMPROVEMENT AGREEMENT – ALCINI PARTNERSHIP

RECOMMENDED ACTION: Grant Limited Amendment to Subdivision Improvement Agreement (without splitting of bonds)

EXECUTIVE SUMMARY:

In February 2001, the Alcini Partnership (“Alcini”) entered into a subdivision improvement agreement (“Agreement”) for their property on Mast Street. Alcini later sold three acres of the subdivision to a development corporation. This owner anticipated that a meat processing facility (Durham) would locate there, but that did not occur.

In May 2002, pursuant to language in this particular Agreement, the City Manager granted an extension of the Agreement until January 14, 2003 (such language is normally not included in our subdivision improvement agreements). In October 2002, Alcini requested the Council extend the Agreement until a new purchaser was located and commenced construction. The Council granted the extension, and the Agreement was extended until March 14, 2004. (See Agreement and Amendment attached hereto.)

Alcini has not installed the improvements, and has now requested another amendment to the Agreement. (See letter to City Manager dated March 22, 2004, attached hereto.) This amendment would provide that the term of the Agreement is extended until “such time as a project is initiated at the Durham Meats site,” and that the bond requirement be revised to allow Alcini to carry the bonds on their parcel, and require Durham to carry the bonds on their parcel. This would effectively relieve Alcini of the obligation to install the improvements on the Durham site.

Municipal Code section 17.32.260 provides that subdivision improvements must be completed by a developer within eighteen months, or within twenty-four months as approved by the city engineer, from recording of the final map, unless the deadline is extended by the Council. Section 17.32.010 also specifically provides that “the subdivider shall construct all required improvements. . . .”

Council has two options: (1) do not extend the Agreement and invoke the bonds; or (2) extend the Agreement, but decline to split the bond requirement between the parcels.

Staff (Public Works, Planning, City Attorney) recommend the Council proceed with the second option. Although staff does not believe that the improvements need to be installed on the vacant lot until the property develops, (but should be installed on the lot that is already developed) they also do not recommend that Alcini be relieved of its burden to install the improvements on either lot. That burden was a condition of the original subdivision approval, and Alcini realized the benefit of that approval by selling the Durham Meat parcel. Moreover, given the language of the Municipal Code imposing the duty on the subdivider to install the public improvements, it appears that Council cannot relieve Alcini of this burden without violating its own Code. For these reasons, staff recommends that the Council extend the Agreement for one more year, but not relieve Alcini of the burden to install the improvements by splitting the bonding requirements.

FISCAL IMPACT: No budget adjustment required.

Agenda Item # 1

Prepared By:

Helene Leichter
City Attorney

Submitted By:

J. Edward Tewes
City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: September 1, 2004

EXTENSION OF MILLER NETWORKS CONTRACT

RECOMMENDED ACTION(S): Authorize the City Manager to Execute the Agreement

EXECUTIVE SUMMARY: The City has recently decided to contract with the City of Palo Alto for information technology support services. The Council authorized the City Manager to enter into an agreement with Palo Alto on June 16. Staff is now in the final stages of finalizing the contract language with Palo Alto and they were not able to begin working for the City of Morgan Hill on September 1 as originally envisioned. The new estimated start date is October 1.

Since it is essential that the City have computer support services available, staff has drafted the attached brief contract extension with Miller Networks, the City's existing support provider, that will enable them to continue serving the City for the month of September. Staff recommends that the City Manager be authorized to execute the agreement.

FISCAL IMPACT: No budget adjustment is requested at this time.

Agenda Item #2

Prepared By:

Program Administrator

Approved By:

Public Works Director

Submitted By:

City Manager

**FOURTH AMENDMENT TO AGREEMENT
MILLER NETWORKS, INC.**

THIS AGREEMENT is made this ____ day of August 2004, by the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Miller Networks Inc., a California corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to the City of Morgan Hill's City Council approval on June 20, 2001.
2. CITY desires to amend the CONSULTANT AGREEMENT dated June 20, 2001, attached as Exhibit "A" to this Agreement, the CONTRACT AMENDMENT dated November, 2002 attached as Exhibit "B" incorporated herein, the CONTRACT AMENDMENT dated February, 2004 attached as Exhibit "C" incorporated herein, and the CONTRACT AMENDMENT dated June, 2004 attached as Exhibit "D" incorporated herein.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Condition of Original Agreement.** All terms and conditions contained in Exhibits A, B and C are to remain in full force and effect with the sole exception of the terms listed below:

Page One, Section One, Term of Agreement, is amended to read:

"1. **Term of Agreement.** The term of this Agreement shall be from July 1, 2001 to September 30, 2004."

Page One, Section Three, Compensation, is amended to read:

"3.1 **Maximum Compensation.** The CONSULTANT will be paid an amount not to exceed \$163,900 annually in Fiscal Year 2001-2002, \$179,300 annually in Fiscal Year 2002-2003, \$191,400 annually in Fiscal Year 2003-2004, and \$37,500 in Fiscal Year 2004-2005.

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3.2 Monthly Retainer The CONSULTANT will be compensated at the rate of \$12,417 per month in Fiscal Year 2001-2002, \$13,250 per month from July 2002- October 2002, \$13,750 per month from November 2002 - June 2003, \$14,500 per month from July 2003 – February 2004, \$11,500 per month from March 2004 – May 2004, \$12,000 for the month of June 2004, and \$12,500 per month from July 2004 – September 2004. Payment shall be made on a pro rata basis for any partial month service. Monthly retainer is intended to compensate CONSULTANT for management and daily maintenance for personal computer hardware, associated peripheral equipment, multiple LAN/WAN systems, and assistance in the preparation and maintenance of strategic IT management planning efforts. CONSULTANT and CITY agree that there shall be no Service Level Financial Impacts after February 2004.”

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

CITY OF MORGAN HILL

By: _____

City Manager

Date: _____

ATTEST:

By: _____

City Clerk

Date: _____

APPROVED:

By: _____

Risk Manager

Date: _____

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

By: _____

City Attorney



CITY COUNCIL STAFF REPORT

MEETING DATE: *September 1, 2004*

RESPONSE TO SANTA CLARA COUNTY GRAND JURY

RECOMMENDED ACTION:

Direct staff to provide the proposed response to the 2003/04 Grand Jury concerning their Final Report "Inquiry into Financial and Performance Audits for the County and Cities in the County."

Agenda Item # 4

Prepared By:

Finance Director

Submitted By:

City Manager

EXECUTIVE SUMMARY: The Santa Clara County Grand Jury conducted the attached "Inquiry into Financial and Performance Audits for the County and Cities in the County." The Grand Jury requested that City of Morgan Hill staff complete a survey regarding the number of internal and external departmental financial audits and the number of internal and external departmental performance audits, completed during each of the last three fiscal years. The City is required to agree or disagree with the Grand Jury's findings, under California Penal Code section 933.05. Staff recommends that the City Council agree with the following three Grand Jury findings, although not all relate directly to the City of Morgan Hill, based solely on the information contained within the Grand Jury report on this subject:

Finding 1: The City of San Jose and the County of Santa Clara make effective use of internal and external financial and performance audits to improve the functioning of their government operations. Both were found to be diligent in following up on the findings and recommendations of the audits.

Finding 2: The Office of the Auditor of San Jose makes effective use of a risk analysis to focus audits on the most vulnerable areas of government operations and those functions with the potential for greatest savings.

Finding 3: Several County cities do not have financial & performance management auditing programs.

The City is also required to respond to each Grand Jury recommendation by selecting from one of four standard responses, as mandated under Penal Code section 933.05. The recommendations follow:

Recommendation II-A: "All municipalities in the County should consider performing and annually updating a formal risk analysis of their operations similar to that done by San Jose." Staff recommends that the City respond as follows: ***"This recommendation will not be implemented because it is not reasonable."*** However, staff will bring the subject of risk analysis to the City's Finance and Audit Committee by December 31, 2004, so that the Committee may discuss whether the City's existing risk analysis is sufficient to reasonably safeguard the City or whether the City should consider formalizing the risk analysis process in a manner that would better fit this City's needs."

Recommendation II-B: "Municipalities in the County should consider performing internal or external audits of the most vulnerable operations identified in a risk analysis." Staff recommends that the City select respond as follows: ***"This recommendation has been implemented."*** Annual financial and compliance audits are conducted by the City's independent auditor. City staff will periodically request that these auditors investigate specific areas of concern. In addition, the City periodically hires outside consultants or uses in-house staff to audit the City's processes and procedures. Recent examples are a development processing audit and an information technology management study."

Recommendation III: "Municipalities in the County without auditing programs should consider using local external auditors such as the City Auditor, via a contract, or the County's external auditor to perform audits if an internal auditor is not cost-effective." Staff recommends that the City respond as follows: ***"This recommendation will not be implemented because it is not reasonable."*** This recommendation does not apply to Morgan Hill."

FISCAL IMPACT: None



CITY COUNCIL STAFF REPORT

MEETING DATE: *September 1, 2004*

RESPONSE TO SANTA CLARA COUNTY GRAND JURY REPORT "INQUIRY INTO POLICE EVIDENCE ROOMS IN SANTA CLARA COUNTY"

RECOMMENDED ACTION:

Direct Staff to provide the responses described below to the 2003-2004 Santa Clara County Grand Jury.

EXECUTIVE SUMMARY: The Santa Clara County Grand Jury issued the attached report entitled "Inquiry into Police Evidence Rooms in Santa Clara County" on May 20, 2004. The report is a summary of a survey of the auditing practices of evidence rooms at the thirteen police agencies in Santa Clara County including Morgan Hill Police Department. The report also contains the results of inspections of five police evidence rooms in the county. The Morgan Hill Police Department evidence room was not inspected.

As part of their report the Grand Jury issues "findings". The City is required to respond to the findings and agree or disagree with them pursuant to California Penal Code Section 933.5. Staff recommends that the City agree with Grand Jury findings I, II, III, V, IV, and VII. Finding I indicates that county police agencies perform audits of their evidence rooms when there is a change in leadership in the organization, and that audits are performed periodically by personnel not involved in the supervision of evidence room personnel. Finding II states most police evidence rooms are overcrowded and that agencies rent space off-site to store overflow property and evidence. Finding III states there are no current procedures in place for documenting the change of custody that occurs when the police relinquish evidence to the court for trial. Finding IV some evidence rooms do not vent narcotic holding areas separately from the main air conditioning systems. Finding V discusses the lack of automation in some evidence rooms and its effect on potential clerical errors, workload and delayed identification of property for final disposition. Finding VII states that most police agencies in the county are members of C.A.P.E. (California Association for Property Evidence) and S.C.R.A.P.E. (Santa Clara County Regional Association of Property and Evidence) and by being members agency personnel improve their evidence procedures by training and networking. Staff recommends that the city disagree with finding VI. Finding VI states that top management within police agencies often stay clear of evidence rooms.

The City is required to respond to each Grand Jury "recommendation" by selecting from one of four responses pursuant to Penal Code Section 933.05. Staff recommends that the City respond by selecting "Recommendations numbered I, II-A, II-B, IV, V, VI, and VII-A have been implemented." Recommendation I is an outside audit of evidence room at least every 4 years and spot checks at least 2 times a year. Recommendation II-A, states that a total inventory should be performed and that items should be purged, returned or disposed of per California law. Recommendation II-B, police agencies should enforce or develop a policy of not holding found property more than 90 days. Recommendation IV, police agencies should properly vent narcotics storage rooms. Recommendation V, agencies should acquire computer software to properly track evidence in and out of evidence rooms. Recommendation VI, the police chief should tour the evidence room at least annually. Recommendation VII-A, agency evidence personnel should continue to participate in C.A.P.E. and S.C.R.A.P.E. functions.

Staff further recommends that the City respond by selecting "Recommendations numbered III and II-C have not been implemented but will be implemented in the future". Recommendation III, suggests that until formal procedures are implemented that police agencies obtain signed receipts from the court when evidence for trials is handled over for trial. Recommendation II-C, agencies should explore the development of a common facility to store long-term evidence to reduce the load in overcrowded evidence rooms.

And finally, staff recommends that the City respond by selecting "Recommendations numbered VII-B will not be implemented because they are not warranted or are not reasonable." Recommendation VII-B, states that agencies should explore the idea of inspecting and auditing each others evidence rooms to share ideas and save money.

FISCAL IMPACT: None

Agenda Item # 3

Prepared By:

Police Chief

Approved By:

(Department Director)

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: *September 1, 2004*

RESPONSE TO SANTA CLARA COUNTY GRAND JURY

RECOMMENDED ACTION:

Direct staff to provide the proposed response to the 2003/04 Grand Jury concerning their Final Report "Inquiry into Financial and Performance Audits for the County and Cities in the County."

Agenda Item # 4

Prepared By:

Finance Director

Submitted By:

City Manager

EXECUTIVE SUMMARY: The Santa Clara County Grand Jury conducted the attached "Inquiry into Financial and Performance Audits for the County and Cities in the County." The Grand Jury requested that City of Morgan Hill staff complete a survey regarding the number of internal and external departmental financial audits and the number of internal and external departmental performance audits, completed during each of the last three fiscal years. The City is required to agree or disagree with the Grand Jury's findings, under California Penal Code section 933.05. Staff recommends that the City Council agree with the following three Grand Jury findings, although not all relate directly to the City of Morgan Hill, based solely on the information contained within the Grand Jury report on this subject:

Finding 1: The City of San Jose and the County of Santa Clara make effective use of internal and external financial and performance audits to improve the functioning of their government operations. Both were found to be diligent in following up on the findings and recommendations of the audits.

Finding 2: The Office of the Auditor of San Jose makes effective use of a risk analysis to focus audits on the most vulnerable areas of government operations and those functions with the potential for greatest savings.

Finding 3: Several County cities do not have financial & performance management auditing programs.

The City is also required to respond to each Grand Jury recommendation by selecting from one of four standard responses, as mandated under Penal Code section 933.05. The recommendations follow:

Recommendation II-A: "All municipalities in the County should consider performing and annually updating a formal risk analysis of their operations similar to that done by San Jose." Staff recommends that the City respond as follows: ***"This recommendation will not be implemented because it is not reasonable."*** However, staff will bring the subject of risk analysis to the City's Finance and Audit Committee by December 31, 2004, so that the Committee may discuss whether the City's existing risk analysis is sufficient to reasonably safeguard the City or whether the City should consider formalizing the risk analysis process in a manner that would better fit this City's needs."

Recommendation II-B: "Municipalities in the County should consider performing internal or external audits of the most vulnerable operations identified in a risk analysis." Staff recommends that the City select respond as follows: ***"This recommendation has been implemented."*** Annual financial and compliance audits are conducted by the City's independent auditor. City staff will periodically request that these auditors investigate specific areas of concern. In addition, the City periodically hires outside consultants or uses in-house staff to audit the City's processes and procedures. Recent examples are a development processing audit and an information technology management study."

Recommendation III: "Municipalities in the County without auditing programs should consider using local external auditors such as the City Auditor, via a contract, or the County's external auditor to perform audits if an internal auditor is not cost-effective." Staff recommends that the City respond as follows: ***"This recommendation will not be implemented because it is not reasonable."*** This recommendation does not apply to Morgan Hill."

FISCAL IMPACT: None



CITY COUNCIL STAFF REPORT

MEETING DATE: SEPTEMBER 1, 2004

FINAL MAP APPROVAL FOR VIALE (TRACT 9589)

RECOMMENDED ACTION(S):

- 1) Approve the final map, subdivision agreement and improvement plans
- 2) Authorize the City Manager to sign the Subdivision Improvement Agreement on behalf of the City
- 3) Authorize the recordation of the map and the Subdivision Improvement Agreement following recordation of the Development Improvement Agreement

EXECUTIVE SUMMARY:

Tract 9589 is a 10 lot subdivision located on the northeast corner of the Watsonville Road and Calle Sueno intersection (see attached location map). The developer has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on April 7, 2004.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provisions with a Title Company to provide the City with the required fees, insurance and bonds prior to recordation of the Final Map.

FISCAL IMPACT:

Development review for this project is from development processing fees.

Agenda Item # 5

Prepared By:

Senior Civil Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: SEPTEMBER 1, 2004

FINAL MAP APPROVAL FOR CAPRIANO PH. VI (TRACT 9617)

RECOMMENDED ACTION(S):

- 1) Approve the final map, subdivision agreement and improvement plans
- 2) Authorize the City Manager to sign the Subdivision Improvement Agreement on behalf of the City
- 3) Authorize the recordation of the map and the Subdivision Improvement Agreement following recordation of the Development Improvement Agreement

EXECUTIVE SUMMARY:

Tract 9617 is a 24 lot subdivision located on the southeast corner of the Tilton Avenue and Dougherty Avenue intersection (see attached location map). The developer has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on June 8, 2004.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provisions with a Title Company to provide the City with the required fees, insurance and bonds prior to recordation of the Final Map.

FISCAL IMPACT:

Development review for this project is from development processing fees.

Agenda Item # 6

Prepared By:

Senior Civil Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: SEPTEMBER 1, 2004

FINAL MAP APPROVAL FOR MISSION RANCH PH. VII (TRACT 9602)

RECOMMENDED ACTION(S):

- 1) Approve the final map, subdivision agreement and improvement plans
- 2) Authorize the City Manager to sign the Subdivision Improvement Agreement on behalf of the City
- 3) Authorize the recordation of the map and the Subdivision Improvement Agreement following recordation of the Development Improvement Agreement

EXECUTIVE SUMMARY:

Tract 9602 is a 21 lot subdivision located on the southeast corner of the Cochrane Road and Peet Road intersection (see attached location map). The developer has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on January 27, 2004.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provisions with a Title Company to provide the City with the required fees, insurance and bonds prior to recordation of the Final Map.

FISCAL IMPACT:

Development review for this project is from development processing fees.

Agenda Item # 7

Prepared By:

Senior Civil Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT
MEETING DATE: SEPTEMBER 1, 2004

**AWARD OF PROFESSIONAL SERVICES CONTRACT
TO PREPARE PSR/PR FOR 101/TENNANT INTERCHANGE
PROJECT**

RECOMMENDED ACTION(S): Authorize the City Manager to execute a consultant agreement for the preparation of a Project Study Report/Project Report (PSR/PR), including all environmental studies and geometric alignments necessary to begin the design process for the 101/Tennant Avenue Interchange project with Mark Thomas & Company, Inc., subject to approval by the City Attorney.

EXECUTIVE SUMMARY: The scope of work consists of completing a Project Study Report/Project Report for the future widening of the 101/Tennant overpass. In addition to the PSR/PR, an Initial Study, funding strategies, traffic forecasting, engineering alternatives, mapping, geometric layouts, overpass planning and project estimating will be performed. With completing PSR/PR required by Caltrans, it will position the City to pursue grant funding for the project.

The attached \$298,703 proposal from Mark Thomas & Company, Inc. provides a detailed description of their scope of services for this work. Mark Thomas & Company will be performing most of the scope of the work, while the remaining amount will be distributed to subconsultants, such as Hexagon Transportation (Traffic), Radman Aerial (Aerial Photo and Mapping), Grey-Bowen (Funding) and David J. Powers (Environmental). Mark Thomas & Company has successfully performed similar work for the City on the 101/Dunne overpass widening project and their experience will be invaluable for this project. Staff recommends approval of the attached proposal. Staff anticipates that the processing of a PSR/PR and IS/CE environmental document will take 18 to 20 months assuming Caltrans is the lead agency for the environmental process.

FISCAL IMPACT: There is \$520,000 budgeted for this project in the current year CIP (Capital Improvement Project #531003, 101-Tennant Interchange) which is sufficient to finance this Contract.

Agenda Item #8

Prepared By:

Senior Civil Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: SEPTEMBER 1, 2004

TITLE: PURCHASE OF PHOTOCOPIERS

RECOMMENDED ACTIONS:

- 1) Authorize the purchase of four new copiers through Rabbit Office Automation subject to City Attorney review and approval**
- 2) Declare the three existing copiers as surplus and authorize disposal by the Purchasing Officer**
- 3) Approve \$8,947 in additional appropriations from the Public Facilities Non-AB 1600 Fund and \$24,341 in additional appropriations from General Fund reserves**

Agenda Item # 9

Prepared By:

Chu Thai
Chu Thai

Approved By:

Jack Dilles

Submitted By:

City Manager

EXECUTIVE SUMMARY:

City staff is requesting the replacement of three existing copiers and the purchase of a new copier for the Aquatics Center. Exhibit A details the equipment request. The three existing copiers which need replacement are located at the Police Department (seven years old), Public Works (eight years old), and City Clerk's Office (4 years old with over 2 million pages). All three copiers experience daily paper jams, toner leakage, inconsistent print quality and mechanical failures. The City Clerk's Office has been struggling with their machine, but believed it would last another year, so a request was not placed in the 2004/05 City Budget. However, for the past few months, the City Clerk's copier has required weekly service calls, and has been inoperative approximately half of the time. Since staff considers photocopying a mission critical service, we are requesting that the current equipment be replaced with new units that can maintain our expected level of service. Staff also determined that purchasing is more cost effective for the city than leasing.

A subcommittee from the Purchasing Study Team developed specifications and standards for copiers that would meet the various needs of City departments. After extensive research and site visits to four local copier representatives: Sharp, Xerox, Konica-Minolta and Savin, the Subcommittee determined that Rabbit Office Automation of Sunnyvale will provide the City with State CMAS pricing or better and flexibility in the maintenance agreement.

Maintenance costs will be a citywide standard of \$0.01 to \$0.0112 per black and white page; equivalent to what the City currently pays. Maintenance includes toner, parts, labor and support but excludes paper and staples. City staff produces approximately 1.5 million photocopy pages per year.

Pending City Attorney final review of the Rabbit maintenance agreement, staff recommends that the City Council authorize the purchase of four new copiers from Rabbit Office Automation, declare the three existing copiers surplus and authorize their disposal by the Purchasing Officer.

FISCAL IMPACT:

The proposed purchase will cost a total of \$71,317 and will use a combination of appropriated and unappropriated funds. The cost to the General Fund will be \$24,341. Public Works and Aquatics have funds appropriated, while the Police Department's copier will be paid using a combination of appropriated and unappropriated funds. The City Clerk's Office is requesting the use of unappropriated funds. Where the use of unappropriated funds is requested, there is available fund balance. Exhibit B details the funding request.

Morgan Hill – Equipments and Specification:

Police Department has chosen to go with the **Savin C3828 (\$12,999)** with the following specification.

- 38 Copies per Minute in Black and White and 28 copies per minute in Color.
- 80 Sheets Automatic Document Feeder.
- Auto Duplexing.
- 100 Sheet Bypass tray
- Four 500-sheet Paper Drawers.
- Multi-Tray Finisher with the ability to staple 50 sheets and hole punch.
- 2 and 3 hole punch option
- Fax option included too.

Public Works has chosen to go with the **Savin C3828 (\$12,999)** with the following specification.

- 38 Copies per Minute in Black and White and 28 copies per minute in Color.
- 80 Sheets Automatic Document Feeder.
- Auto Duplexing.
- 100 Sheet Bypass tray
- Two 500-sheet Paper Drawers.
- 2000 sheets Large Capacity Tray.
- Multi-Tray Finisher with the ability to staple and hole punch 50 sheets.
- 2 and 3 hole punch option.

Aquatics Center has chosen to go with the **Savin C3828 (\$12,999)** with the following specifications.

- 38 Copies per Minute in Black and White and 28 copies per minute in Color.
- 80 Sheets Automatic Document Feeder.
- Auto Duplexing.
- 100 Sheet Bypass tray
- Four 500-sheet Paper Drawers.
- Multi-Tray Finisher with the ability to staple 50 sheets and hole punch.
- 2 and 3 hole punch option

City Clerk's Office has decided to go with the **Savin 2575 (\$25,499)** with the following specifications

- 75 Copies per Minute in Black and White
- 100 Sheet single pass duplex document feeder
- Two 500-Sheet Paper Tray
- 100 Sheet Bypass tray
- 3100 Sheet Tandem Tray.
- Auto Duplex
- 40GB Hard Drive
- 128 MB RAM
- Optional 4000 Sheet Capacity LCT (8 ½ and 11)
- Optional SR850 Finisher (3000 Sheet Finisher with 50 sheets staple and hole punch capacity for 8 ½ by 11)

EXHIBIT B**EQUIPMENT REQUEST**

<u>Department</u>	<u>Equipment</u>	<u>Price</u>
Police	C3828	12,999.00
Public Works	C3828	12,999.00
Aquatics Center	C3828	12,999.00
City Clerk	2575	25,499.00
	<u>Subtotal</u>	<u>64,496.00</u>
	Tax (8.25%)	5,320.91
	Delivery (\$125 per machine)	500.00
	Network Installation (\$250 per machine)	1,000.00
	Total	71,316.91

FUNDING

<u>Department</u>	<u>Fund</u>	<u>Account</u>	<u>Amount</u>	<u>Budgeted?</u>
Police	General Fund	010-42231-3205	2,000.00	yes
	General Fund	010-42531-3205	3,500.00	yes
	Public Facilities	346-86450-8049-228000	8,946.42	no
Public Works	Community Development	206-43835-5410	3,611.60	yes
	Sewer	640-43835-5900	3,611.60	yes
	Water	650-43835-5710	3,611.60	yes
	CIP Administration	745-43835-8280	3,611.60	yes
Aquatics Center	RDA	317-86450-8055-115000	14,446.42	yes
City Clerk	General Fund	010-43825-2410	24,340.67	no
City Clerk	RDA	010-43825-2410	3,637.00	yes

Total	71,316.91
--------------	------------------

General Fund budgeted	5,500.00
RDA Fund budgeted	14,446.42
Sewer Fund budgeted	3,611.60
Water Fund budgeted	3,611.60
CIP Administration Fund budgeted	3,611.60
Budgeted Subtotal	38,029.82
General Fund unfunded	24,340.67
Public Facilities Fund unfunded	8,946.42
Unfunded Subtotal	33,287.09



CITY COUNCIL STAFF REPORT

MEETING DATE: SEPTEMBER 1, 2004

Agenda Item # 10

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1690, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1660, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-12: PEET – LUPINE INVESTORS/BORELLO (APNs 728-34-002 & - 003) (DAA-03-12: PEET - LUPINE)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1690, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On August 18, 2004, the City Council Introduced Ordinance No. 1690, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1690, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1660, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-12: PEET – LUPINE INVESTORS/BORELLO (APNs 728-34-002 & -003) (DAA-03-12: PEET - LUPINE)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code, Resolution Nos. 03-17a and 03-17b adopted May 27, 2003, and Resolution Nos. 04-35 and 04-36 adopted March 23, 2004, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-02-12: Peet – Lupine Investors/Borello	22 units (Fiscal Year 2004-05)
	19 units (Fiscal Year 2005-06)
	12 units (Fiscal Year 2006-07)

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill.

These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to is amended by this ordinance and shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 9. MODIFICATION TO DEVELOPMENT SCHEDULE. The Council hereby approves an amendment to the development schedule for the Alicante Estates project, as attached in Exhibit A, and by this reference incorporated herein.

SECTION 10. MODIFICATION TO PARAGRAPH 8. The Council hereby approves an amendment to Paragraph 8 of the development agreement, as attached in Exhibit B, and by this reference incorporated herein.

SECTION 11. MODIFICATION TO PARAGRAPH 14(i)(iv). The Council hereby approves an amendment to Paragraph 14(i)(iv) of the development agreement, as attached in Exhibit C, and by this reference incorporated herein.

SECTION 12. MODIFICATION TO PARAGRAPH 14(l). The Council hereby approves an amendment to Paragraph 14(l) of the development agreement, as attached in Exhibit D, and by this reference incorporated herein.

SECTION 13. MODIFICATION TO PARAGRAPH 14(m)(ix). The Council hereby approves an amendment to Paragraph 14(m)(ix) of the development agreement, as attached in Exhibit E, and by this reference incorporated herein.

SECTION 14. MODIFICATION TO PARAGRAPH 14(p)(i). The Council hereby approves an amendment to Paragraph 14(p)(i) of the development agreement, as attached in Exhibit F, and by this reference incorporated herein.

SECTION 15. For the purposes of this development agreement amendment, all references to lot numbers and project phasing shall be as identified on the exhibit entitled, 'Alicante Estates Phases 1 through 3', date stamped July 27, 2004, and on file at the Community Development Department.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 18th Day of August 2004, and was finally adopted at a regular meeting of said Council on the 1st Day of September 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1690, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 1st Day of September 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk

EXHIBIT A

DEVELOPMENT SCHEDULE MP-02-12: PEET – LUPINE INVESTORS/BORELLO
FY 2004-05 (~~11~~ **22** units), FY 2005-06 (~~15~~ **19** units), FY 2006-07 (12 units)

- | | | |
|------|---|---|
| I. | SUBDIVISION AND ZONING APPLICATIONS
Applications Filed: | October 14, 2003 |
| II. | SITE REVIEW APPLICATION
Application Filed: | November 19, 2003 |
| III. | FINAL MAP SUBMITTAL
Map, Improvements Agreement and Bonds: | March 31, 2004 |
| IV. | BUILDING PERMIT SUBMITTAL
Submit plans to Building Division for plan check:
FY 2004-05 (11 22 units)
FY 2005-06 (15 19 units)
FY 2006-07 (12 units) |
June 30, 2004
June 30, 2005
June 30, 2006 |
| V. | BUILDING PERMITS
Obtain Building Permits:
FY 2004-05 (11 12 units)
(10 units)
FY 2005-06 (15 19 units)
FY 2006-07 (12 units)

Commence Construction:
FY 2004-05 (11 22 units)
FY 2005-06 (15 19 units)
FY 2006-07 (12 units) |
September November 30, 2004
January 30, 2005
September 30, 2005
September 30, 2006

June 30, 2005
June 30, 2006
June 30, 2007 |

Failure to obtain building permits and commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit six (6) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least ~~19~~ **27** dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

EXHIBIT B

8. City's Approval Proceedings for Project. On May 27, 2003, the City of Morgan Hill approved a development plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MP-02-12: Peet – Lupine Investors/Borello, on file in the office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

Construction of ~~38~~ **53** single-family homes as approved by the City of Morgan Hill Planning Commission *as follows*:

<i>Phase 1</i>	<i>FY 2004-05</i>	<i>22 units (11 original, plus 11 supplemental)</i>
<i>Phase 2</i>	<i>FY 2005-06</i>	<i>19 units (15 original, plus 4 supplemental)</i>
<i>Phase 3</i>	<i>FY 2006-07</i>	<i>12 units</i>

9. Changes in Project.

(a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

(d) In the event the developer is unable to secure construction liability insurance because the project contains attached dwellings, the developer may convert the attached units into zero lot line or reduced setback detached units, subject to the review and approval of the Architectural Review Board. A zero lot line or reduced setback detached unit is defined as a dwelling physically separated from an adjacent dwelling on a separate lot of record but architecturally connected by a design element to give the appearance of attachment. In order to qualify for zero lot line or reduced setback detached units, evidence shall be provided to the City that the developer is unable to obtain construction liability insurance due specifically to the attached dwellings. This provision is contingent upon City Council approval of amendments to Title 18 of the Morgan Hill Municipal Code (the Zoning Code) to allow zero lot line or reduced setback detached units.

10. Time for Construction and Completion of Project.

(a) Securing Building Permits and Beginning Construction. Unless excused from performance as provided in paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance

EXHIBIT C

Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Site and Architectural Review Process.

(g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

(h) Property Owner agrees to include the following **safety** features in the development:

- (i) Fire escape ladders for all upper floor bedrooms
- (ii) One mounted fire extinguisher (rated 2A10BC) for the first 1,500 sf of floor space, plus one mounted fire extinguisher (rated 2A10BC) for each additional 1,500 sf of floor space
- (iii) Outdoor lighting to meet all police department specifications
- (iv) Illuminated address numbers for each unit and painted curb numbers where possible
- (v) Noncombustible siding materials on at least 50 percent of units, and on at least 50 percent on an individual unit
- (vi) Intrusion and fire alarm system monitored by a central station and which meets City ordinance
- (vii) Automatic earthquake shut-off valves for gas service

(i) Property Owner agrees to include the following **open space and landscape** improvements in the development:

- (i) Private open space areas will be maintained by a homeowners' association
- (ii) Continuous open space buffer 10 ft in excess of minimum requirement along Peet Rd frontage
- (iii) Interior paths to the future four-acre public park
- (iv) A minimum of 3.95 acres of private common open space within the project interior, of which at least one acre will be provided in Phase 2 of the project ***and at least one acre in Phase 3***
- (v) Landscape island and entry statement at Peet Road entrance
- (vi) One, 24-inch box size tree for each ten site trees; trees shall be from city approved list, with a minimum height of nine feet and spread of three to four feet
- (vii) Varied front yard landscaping installed by developer
- (viii) Deciduous trees planted along south facing side of homes
- (ix) 24-inch box street trees from city approved list, two per lot, three per corner lot
- (x) Drought tolerant grasses for lawn areas; no more than 25 percent of landscape area to be covered with lawn (calculation exclusive of park landscape area)
- (xi) Water conserving, automatic irrigation system with minimum three separate valves and circuits for trees; shrubs and groundcover; and lawn areas.
- (xii) Non-irrigated hardscape on at least 15 percent of landscape area (pedestrian walkways across circulation aisles not included)
- (xiii) Minimum 50 percent of all plant material will be water conserving

EXHIBIT D (page 1 of 2)

plant material from the Selected Plan List, Appendix A of the City Water Conservation Landscape Guide

- (xiv) Landscaping will be installed in all areas visible from public and private rights-of-way
- (xv) Existing trees located along the project frontages that are not located in the public right-of-way or diseased will be saved
- (xvi) Provide funds to preserve riparian habitat along Coyote Creek in an amount at least equal to \$1,000 per unit per point
- (xvii) Precast masonry sound walls shall be constructed along the Cochrane Road and Peet Road frontages to ensure exterior (rear yard) noise levels do not exceed 60 dBA L_{dn} and indoor noise levels do not exceed an L_{dn} of 45 dBA. The wall shall be designed to minimize its size along the project frontages (e.g., stepped down to 3 ft. in height or replaced with wrought iron fencing adjacent the front yards and cul-de-sac bulbs) as approved by the Architectural Review Board.
- (xviii) Enhanced landscaping shall be provided along the Cochrane Road frontage, particularly in front of the cul-de-sac bulbs, to minimize light impacts on existing residences on the north side of Cochrane Road and to maintain a rural appearance.

(j) Property Owner agrees to pay the district-adopted developer fees as provided by the Leroy F. Greene School Facilities Act of 1998.

(k) Property Owner agrees to purchase one (1) transferable development credit (TDC) for every 25 dwelling units, subject to this development potential transfer mechanism. Based on 38 allotments, the purchase of 1.52 TDCs is required. One full TDC shall be purchased prior to the issuance of a building permit for the first unit in Phase 2, with the remaining fraction of 0.52 TDC due prior to the issuance of a building permit for the first unit in Phase 3. Payment of the 0.52 TDC shall be provided in the form of an in-lieu open space fee in an amount satisfactory to the City Council. Should purchase of the one, full TDC prove infeasible, Property Owner may, at City's option, pay an in-lieu open space fee for the entire 1.52 TDC in an amount satisfactory to the City Council. Payment of the 1.52 TDC shall be collected on a per unit basis at time of building permit issuance. Building permits will not be granted unless this provision has been complied with to the satisfaction of the City Council.

(l) Property Owner agrees to include the following **affordable housing** features in the development:

- (i) The Property Owner shall provide units for participation in a Below Market Rate (BMR) low income, for sale program approved by the Community Development Department as follows: ~~one (1)~~ **three (3)** in Phase 1, ~~two (2)~~ **one (1)** in Phase 2, and ~~one (1)~~ **two (2)** in Phase 3. The BMR unit(s) shall be approved by the City of Morgan Hill Planning Commission and Site and Architectural Review process. For Phase 1, ~~the a~~ BMR shall pass framing inspection prior to the framing inspection of the ~~seventh (7th)~~ **10th, 20th and 24th** Measure P building permit. The ~~two single~~ Phase 2 BMR units shall pass framing inspection prior to the framing inspection of the ~~22nd~~ **33rd** Measure P building permit. The Phase 3 BMR units shall pass framing inspection prior to the framing inspection of the ~~33rd~~ **50th and 55th** Measure P building permit.
- (ii) The BMR units shall be located and designed as follows:
 - Phase 1: Lot 11, **Lot 16, and Lot 21**, **each** 4 bedrooms, three full bathrooms, 2-car garage, 1,498 sf

EXHIBIT D (page 2 of 2)

- Phase 2: ~~Lots 2 and 11~~ **Lot 14**, ~~each~~ 4 bedrooms, three full bathrooms, 2-car garage, 1,498 sf
 - Phase 3: ~~Lot 8~~ **Lot 1 and Lot 10**, ~~each~~ 4 bedrooms, three full bathrooms, 2-car garage, 1,498 sf
 - (iii) Below Market Rate (BMR) purchasers shall be treated in the same manner as purchasers of non-BMR units. Developer, including Developer's company, employees, and/or agents agrees to assist BMR purchasers with all phases of the sales transaction, including, but not limited to, the preparation of any and all documents necessary to complete the sale and representation by a licensed real estate agent/broker.
 - (iv) Minimum standards for equipment, fixtures, appliances and finishes. All items installed shall be of good quality. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. It shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the area. The listed items must be installed as a basic feature of each BMR home.
 - Door hardware to be brass finish
 - Interior doors to be raised panel type or same as market rate
 - All closets shall have doors
 - Appliances shall be major brand name
 - Microwave hood shall be installed over stove
 - Kitchen counters shall be white ceramic tile
 - Kitchen cabinets shall be stained wood with white melamine interiors
 - Units will be roughed in for AC including electrical and line set.
 - Basic alarm system to secure all openings to the home
 - Carpet in bedrooms, hallways, family rooms
 - Linoleum or tile in entry, bathrooms, kitchens
 - Laminate flooring may be substituted for carpet or linoleum
 - Electric garage door opener
 - (v) In addition to the BMR commitment, the project shall include 10 percent attached, moderate rate units (minimum ~~four~~ **six** units). The moderate units shall be located and designed as follows:
 - Phase 1: Lot 12, **Lot 17, and Lot 22**, ~~each~~ 3 bedrooms plus optional 4th bedroom or den, 3 full bathrooms, 2-car garage, 2,210 sf
 - Phase 2: ~~Lots 1 and 12~~ **Lot 13**, ~~each~~ 3 bedrooms plus optional 4th bedroom or den, 3 full bathrooms, 2-car garage, 2,210 sf
 - Phase 3: ~~Lot 7~~ **Lot 2 and Lot 11**, ~~each~~ 3 bedrooms plus optional 4th bedroom or den, 3 full bathrooms, 2-car garage, 2,210 sf
 - (vi) The final sales price (at close of escrow) for the ~~four~~ **six** moderate rate units shall be based on HUD income limits for a family of 4 at the closing date.
- (m) Property Owner agrees to include the following **construction** features in the development:

EXHIBIT E

- (ix) ~~Two Six~~ modified setback dwellings are allowed in Phase 1 of the project, and ~~four two~~ modified setback dwellings are allowed in Phase 2 if building permits are obtained by June 30, 2005. An additional ~~two four~~ modified setback dwellings are allowed in Phase 3, subject to the extension of Ordinance No. 1641. In the event the City Council does not extend Ordinance No. 1641, the ~~two four~~ modified setback dwellings proposed in Phase 3 shall be constructed as physically attached units.
- (n) The Property Owner agrees to provide the following **circulation** improvements:
- (i) Install a paved walkway to Live Oak High School as part of a joint commitment with the Mission Ranch and Coyote Estates projects
 - (ii) Install off-site pedestrian safety improvements within $\frac{3}{4}$ mile of the project as designated and/or approved by the MHUSD at a cost of at least \$3,000 per allocated unit
 - (iii) Obtain dedication and construct off-site improvements for Cochrane Road along the Ryan property frontage (APN 728-34-004) from the northern edge of the project to St. Marks, at a minimum cost of \$156,000. Improvements shall be provided as follows: Phase 1 – Dedication; Phase 2 – Design; and Phase 3 – Construction. Applicant shall receive credit for excess improvement costs in the next or future phase of the development in accordance with the terms approved by the Public Works Director.
 - (iv) Completes full street improvements along Peet Road.
 - (v) A street connection to Cochrane Road shall be provided with full street improvements (curb, gutter and sidewalk), as identified on the precise development plan. At the time the adjacent parcel to the north (radio station site) is developed, or the project extension of St. Katherine Drive to St. Marks Avenue is completed, the City shall re-evaluate the need for the Cochrane Road connection. If it is determined that the connection is no longer needed, the following conditions shall apply:
 - 1. The project developer shall be responsible for the closure of the connection and redesign of the subject roadway.
 - 2. The paved area between Cochrane Road and the end of the subject street shall be replaced with landscaping and an irrigation system by the project developer. Landscaping shall be consistent with the Landscape Plan approved by the Architectural Review Board.
 - 3. The Alicante Estates Homeowner's Association (HOA) shall accept and maintain the additional landscape area as part of the project common areas. The Alicante Estates CC&Rs shall include language requiring compliance with this condition.
 - 4. Prior to Final Map Approval, the design of the roadway shall be reviewed and approved by the Public Works Department. If required by the Public Works Department, the developer shall offer the necessary right-of-way dedication for the cul-de-sac bulb for future closure of the roadway.

EXHIBIT F

(o) The Property Owner agrees to provide the following **Storm Drain** improvements:

- (i) City maintained storm lines will be constructed within paved areas of the streets
- (ii) Applicant will contribute \$1,000 per unit to the off-site storm drain improvement fund
- (iii) Applicant will contribute \$1,000 per unit to the Capital Improvements Program Fund

(p) The Property Owner agrees to provide the following **park and recreation** improvements:

- (i) On-site recreational amenities will be provided ~~as part of~~ *as follows: Phase 2 - of the project, including* one passive recreation area, one tot lot (*minimum three activities*), one volleyball court, and a picnic/barbeque area; *Phase 3 - one passive recreation area and one play area with apparatus for different age group (min. three activities)*. Future phases of the project shall include the following: one passive recreation area, ~~two~~ *one* tot lots, one, ½ basketball court, and picnic/barbeque areas.
- (ii) Applicant will provide bikeway improvements consistent with the Bikeways Master Plan along Cochrane Road project frontage
- (iii) Applicant will contribute to the creation of a neighborhood park through cooperation with the MHUSD for a new public 4-acre park combined with a connecting school
- (iv) Project will provide park area in excess of 50 percent of code requirement
- (iv) Meandering 7-ft paths along Peet and Cochrane Roads will be installed to provide access to the Coyote Creek County Park
- (v) The project will provide a meandering 7-ft to 8-ft path along Cochrane Road to the east, plus a similar walk along the Cochrane frontage of the Ryan parcel (APN 728-34-004) up to St. Marks, and a cross walk to the County Park entrance across the street
- (vi) As part of Phase 2, a path shall be provided adjacent to Lot 9, connecting the cul-de-sac bulb to the common area park.

(q) Water mains either new or existing shall be gridded between Peet Road and St. Marks, and to Cochrane Road.

(r) The Property Owner shall record constructive notice on the Final Parcel Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

(s) The project shall provide the following information, by address for each unit, to the Community Development Department:

- (i) Date of sale
- (ii) The number of bedrooms
- (iii) The final sales price

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.



CITY COUNCIL STAFF REPORT

MEETING DATE: SEPTEMBER 1, 2004

Agenda Item # 11

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1691, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1658, NEW SERIES, TO AMEND DEVELOPMENT AGREEMENT DA-03-13 FOR APPLICATION MP 02-15: MISSION VIEW-MISSION RANCH TO ALLOW FOR THE INCORPORATION OF 22 SUPPLEMENTAL BUILDING ALLOCATIONS AWARDED IN THE 2003 RDCA COMPETITION. (APN 728-32-008 & 009)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1691, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On August 18, 2004, the City Council Introduced Ordinance No. 1691, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1691, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1658, NEW SERIES, TO AMEND DEVELOPMENT AGREEMENT DA-03-13 FOR APPLICATION MP 02-15: MISSION VIEW-MISSION RANCH TO ALLOW FOR THE INCORPORATION OF 22 SUPPLEMENTAL BUILDING ALLOCATIONS AWARDED IN THE 2003 RDCS COMPETITION. (APN 728-32-008 & 009)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution Nos. 04-35 & 04-36, both adopted March 23, 2004, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-02-15: Mission View – Mission Ranch	10 additional allotment for FY 2004-05 and 12 allotments for FY 2005-06

SECTION 4. The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 5. The City Council hereby finds that the development agreement amendment is necessary to incorporate the 22 supplemental building allocations awarded to the project after the adoption of the original development agreement under ordinance 1658.

SECTION 6. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 7. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 8. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above

referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City. The amended agreement shall replace the development agreement approved under Ordinance No 1658.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 18th Day of August 2004, and was finally adopted at a regular meeting of said Council on the 1st Day of September 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1691, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 1st Day of September 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: SEPTEMBER 1, 2004

Agenda Item # 12

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1692, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 18.24 (CENTRAL COMMERCIAL/ RESIDENTIAL DISTRICT) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-04: CITY OF MORGAN HILL-TEXT AMENDMENT/CC-R)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1692, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On August 18, 2004, the City Council Introduced Ordinance No. 1692, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1692, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 18.24 (CENTRAL COMMERCIAL/RESIDENTIAL DISTRICT) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-04: CITY OF MORGAN HILL-TEXT AMENDMENT/CC-R)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** INCORPORATING ZONING TEXT CHANGES BY REFERENCE. There hereby is attached hereto and made a part of this ordinance, a text amendment to the Planning and Land Use Code, Title 18 of the Morgan Hill Municipal Code, entitled “Central Commercial/Residential Zoning Text Amendment” as contained in the attached Exhibit “A.”
- SECTION 4.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- SECTION 5.** Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 18th Day of August 2004, and was finally adopted at a regular meeting of said Council on the 1st Day of September 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1692, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 1st Day of September 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

Chapter 18.24

CC-R CENTRAL COMMERCIAL/RESIDENTIAL DISTRICT

Sections:

- 18.24.010 Purpose of district.
- 18.24.020 Permitted uses for first floor locations for parcels fronting on Monterey Road or Third Street.
- 18.24.030 Conditional uses for first floor locations on parcels fronting on Monterey Road or Third St.
- 18.24.040 Permitted uses for second story or above locations for parcels fronting on Monterey Road or Third Street.
- 18.24.050 Conditional uses for second story or above location for parcels fronting on Monterey Road or Third Street.
- 18.24.060 Permitted uses for parcels not fronting on Monterey Road or Third Street.
- 18.24.070 Conditional uses for all areas not fronting on Monterey Road or Third Street.
- 18.24.080 Residential Development restrictions within the CC-R district.
- 18.24.090 Accessory uses.
- 18.24.100 Site development standards.
- 18.24.110 Commercial uses--Performance standards.
- 18.24.120 Other required conditions.

18.24.010 Purpose of district.

The purposes of this CC-R central commercial/residential mixed-use district are to:

- A. Implement the goals and objectives of the Downtown Design Plan as recommended by the City Council in 2003 and as amended from time to time.
- B. Preserve older architectural styles in the city;
- C. Provide for a variety and intermixture of residential and commercial activities in the downtown area; and
- D. Conserve housing stock. (Ord. 559 N.S. § A (part), 1981)

18.24.020 Permitted uses for first floor locations for parcels fronting on Monterey Road or Third Street.

The following uses shall be permitted in the CC-R district for first floor locations for parcels fronting on Monterey Rd. or Third St.:

- A. Retail Stores;
- B. Restaurants;

- C. Financial Services;
- D. Nightclubs, theaters and bars;
- E. Commercial indoor recreation uses 3,000 sq. ft. or less in area.
- F. Schools located between E. Dunne Ave. and E. Fifth St.

18.24.030 Conditional uses for first floor locations on parcels fronting on Monterey Road or Third St.

The following uses may be conditionally allowed in the CC-R district on first floor locations on parcels fronting on Monterey Rd. or Third St., subject to issuance of a conditional use permit in accordance with Chapter 18.54 of this title and finding of consistency with the Downtown plan:

- A. Commercial office uses;
- B. Residential units;
- C. Convenience Markets/Stores;
- D. Drive-in Establishments;
- E. Commercial Indoor Recreation.

18.24.040 Permitted uses for second story or above locations for parcels fronting on Monterey Road or Third Street.

The following uses in the CC-R district shall be permitted only in second story (or above) locations for parcels fronting on Monterey Rd. or Third St.:

- A. Single-family attached, duplex and multifamily dwellings (see development restriction in section 18.24.070);
- B. Personal Services;
- C. Professional Offices;
- D. Medical Offices
- E. Small Family Day Care.
- F. All permitted uses listed in Section 18.24.020.

18.24.050 Conditional uses for second story or above location for parcels fronting on Monterey Road or Third Street.

The following uses in the CC-R district shall be conditional in second story (or above) locations for parcels fronting on Monterey Rd. or Third St. subject to issuance of a conditional use permit in accordance with Chapter 18.54 of this title and finding of consistency with the Downtown plan:

- A. Schools
- B Convenience Markets/Stores;

- C. Commercial Indoor Recreation.

18.24.060 Permitted uses for parcels not fronting on Monterey Road or Third Street.

The following uses shall be permitted in the CC-R district for parcels not fronting on Monterey Rd. or Third St.:

- A. Single-family attached, detached, duplex and multifamily dwellings (see development restriction in section 18.24.080);
- B. Retail (excepting locations west of the parcels fronting the west side on Monterey Rd.);
- C. Restaurants;
- D. Personal Services;
- E. Medical Offices;
- F. Professional Offices;
- G. Financial Services;
- H. Small Family Day Care.

18.24.070 Conditional uses for all areas not fronting on Monterey Road or Third Street.

The following uses may be conditionally allowed in all areas not fronting on Monterey Rd. or Third St., subject to issuance of a conditional use permit in accordance with Chapter 18.54 of this title and finding of consistency with the Downtown plan:

- A. Convenience Markets/Stores;
- B. Drive-in Establishments;
- C. Nursery School/Large Family Day Care facility; except on Monterey Rd.
- D. Commercial Indoor Recreation.

18.24.080 Residential Development restrictions within the CC-R district:

Single-family attached, duplex and multifamily dwellings in the CC-R district are subject to the following restrictions:

- A. Residential development control system approval is required for all residential development in accordance with Chapter 18.78 of this title.
- B. Residential development is allowed at a density of one dwelling per two thousand four hundred square feet or greater.
- C. Only one detached dwelling per parcel.
- D. A Residential Planned Development zoning designation is required for development of more than one contiguous parcel proposed by the same individual or entity.

- E. Residential units on parcels fronting Monterey Rd., are permitted only on second story and above locations.
- F. No new residential units shall be allowed in the area bounded by Second Street, Depot Street, Fourth Street and Monterey Road, except as part of mixed use projects.

18.24.090 Accessory uses.

The following accessory uses are permitted in the CC-R district:

- A. All uses customarily appurtenant to a permitted residential use. (Ord. 559 § A (part), 1981)

18.24.100 Site development standards.

The following site development standards shall apply in the CC-R district:

- A. Minimum lot area, six thousand square feet;
- B. Minimum lot width, fifty feet. Minimum lot width for two or more dwellings shall be sixty feet;
- C. Minimum lot depth, one hundred feet;
- D. Maximum building coverage, seventy-five percent;
- E. Minimum setbacks, commercial and mixed use development:
 - 1. Front, zero feet,
 - 2. Rear, zero feet,
 - 3. Side, zero feet;

Unless adjacent to a residential use, in which case the setback shall be a minimum of twenty-five feet or a distance deemed appropriate by the Architectural and Site Review Board after reviewing specific site planning and architectural considerations;

- F. Minimum setbacks, residential:
 - 1. Front, twenty-five feet,
 - 2. Rear, twenty feet,
 - 3. Side, five feet;

Unless part of a planned development, in which case setbacks may vary in accordance with the approved design layout;

- G. Maximum height three stories; thirty-five feet; or 45 ft. with a minimum of 10 ft. devoted to a roof element on a three story structure.
- H. Side street side yard for residential development. A side yard along the side street lot line of a corner lot shall have a width of not less than fifteen feet or one-half the required depth of the front yard, whichever is greater;
- I. Cul-de-sac lot width, minimum of forty feet as measured along the front property

line.

18.24.110 Commercial uses--Performance standards.

In order to achieve residential compatibility with existing dwellings in the CC-R zoning district, the following standards shall apply to proposed commercial uses when they abut residential property:

- A. A trip generation figure of not more than ten trips per one hundred square feet of floor area must be characteristic of the proposed use.
- B. Landscaping, including vegetative screening of the use from adjacent residential structures, shall account for a minimum of ten percent of the lot area.
- C. Noise levels emanating from the commercial enterprise may not exceed sixty dBA at the property perimeter.
- D. Commercial structures must be designed to include a transition in height and mass when constructed adjacent to an existing residential unit
- E. Hours of business operation must be compatible with a residential environment. Should a commercial use be active during the evening hours, noise levels shall not exceed forty-five dBA, as measured at the property boundary.
- F. All proposed commercial use conversion or commercial building expansion shall be subject to site and architectural plan approval by the Architectural and Site Review Board. Minimum front yard setback standards shall be increased by up to twenty-five feet if it is found necessary to maintain the residential character of the neighborhood in which the use conversion or building expansion is proposed.
(Ord 1111 § 15, 1992; Ord. 559 N.S. § A (part), 1981)

18.24.120 Other required conditions.

- A. Architectural and site plan approval by the Architectural and Site Review Board shall be required for construction of any residential dwelling which would result in the establishment of two or more dwellings on any parcel with a street frontage less than sixty feet or an area less than six thousand square feet.
- B. All new residential construction shall conform with provisions of the housing replacement program as set out in Chapter 15.30 of this title.
(Ord. 1111 N.S. § 16, 1992; Ord. 1055 N.S. § C (part), 1991; Ord. 899 N.S. § 29, 1989; Ord. 783 N.S. § 3 (part), 1986)



CITY COUNCIL STAFF REPORT

MEETING DATE: SEPTEMBER 1, 2004

Agenda Item # 13

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1693, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 9.04.010(A) (Discharge-Permit Required-Fee) OF CHAPTER 9.04 (WEAPONS) AND ENACTING CHAPTER 9.06 (IMITATION WEAPONS) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING PROHIBITION OF IMITATION WEAPONS

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1693, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On August 18, 2004, the City Council Introduced Ordinance No. 1693, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None.

ORDINANCE NO. 1693, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 9.04.010(A) (Discharge-Permit Required-Fee) OF CHAPTER 9.04 (WEAPONS) AND ENACTING CHAPTER 9.06 (IMITATION WEAPONS) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING PROHIBITION OF IMITATION WEAPONS

WHEREAS, imitation firearms commonly called “air soft” pellet guns which fire a plastic projectile using air pressure, spring action or electrical charge are readily available to the public, including juveniles, through retail and internet merchants; and,

WHEREAS, on April 26, 2004, police officers were summoned to Jackson Oaks School when frightened citizens called 911 reporting men wearing war-like dress in possession of guns; and,

WHEREAS, all available police officers responded to this serious call “Code 3” (red lights and sirens), and upon their arrival at the school they found four juveniles apparently armed with handguns and an assault rifle in close proximity to a field where numerous children were about to play baseball; and,

WHEREAS, the police officers withheld fire because one of the officers noticed that one of the weapons appeared to be an imitation firearm; and,

WHEREAS, this event ended safely due to the quick observation of the officer and because the juveniles followed the instructions of the police to get on the ground and surrender the weapons; and,

WHEREAS, this incident could have ended tragically because it is virtually impossible to discern imitation firearms from the real firearms they are designed to copy; and,

WHEREAS, imitation firearms present an unnecessary danger to the community, especially when they are displayed in public as citizens may panic when they see these weapons, thereby calling police communications; and,

WHEREAS, police will respond to reports of potential weapons under emergency conditions and will have to confront at significant risk those persons displaying these weapons; and,

WHEREAS, throughout California there have been numerous situations in cities where police officers have had to confront persons possessing “air soft” type imitation weapons, and in several situations these people have been shot by the police because they believed the gun was real; and,

WHEREAS, the City of Morgan Hill currently possesses no restriction on the possession of

these firearms in public; and,

WHEREAS, in order to avert a public tragedy similar to those experienced by other cities, and nearly experienced by the City of Morgan Hill on April 26, 2004, the City Council believes that a City Ordinance is necessary to preserve the public health, safety and welfare.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AND ENACT AS FOLLOWS:

Section 1. Chapter 9.06 (Imitation Weapons) of Title 9 (Public Peace, Morals and Welfare) is hereby added to read as follows:

Chapter 9.06

IMITATION WEAPONS

9.06.010 Possession of Imitation Weapons Unlawful.

It shall be unlawful for any person to possess or display an imitation firearm on public property, in the public right of way, or in an area viewable from public property or the public right of way.

9.06.020 Imitation Weapon – Definition.

For the purposes of this section, an imitation firearm means a replica of a firearm that is so substantially similar in visual characteristics to an existing firearm as to lead a reasonable person to believe that the replica is a firearm that could be operational.

9.06.030 Imitation Weapon – Confiscation and Destruction.

Any imitation firearm that is possessed or displayed in violation of this Chapter may be impounded and held as evidence, returned to the person from whom it was taken or destroyed as outlined in Section 9.04.030.

9.06.040 Imitation Weapon – Exception.

This section shall not apply to the possession or display of an imitation firearm as authorized in writing by the Police Chief.

Section 2. Section 9.04.10(A) (Discharge-Permit Required-Fee) of Chapter 9.06 (Weapons) of Title 9 (Public Peace, Morals and Welfare) is hereby amended to read as follows:

9.04.010 Discharge-Permit Required-Fee

A. No person shall discharge in the city, outside of a licensed shooting range, any instrument or device of any kind, character or description which discharges, propels or hurls bullets, missiles of any kind to any distance from such instrument or device by means of elastic force, air pressure, vacuum, explosive force, **mechanical spring action or electrical charge**, without first having applied for and obtained a written permit therefore from the chief of police.

Section 3. **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 4. **Effective Date; Posting.** This ordinance shall take effect thirty (30) days after its second reading. This ordinance shall be posted at City Hall.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 18th Day of August 2004, and was finally adopted at a regular meeting of said Council on the 1st Day of September 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1693, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 1st Day of September 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

**CITY OF MORGAN HILL
SPECIAL CITY COUNCIL MEETING
MINUTES – AUGUST 18, 2004**

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 4:05 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Tate and Mayor Kennedy

DECLARATION OF POSTING OF AGENDA

City Manager Tewes certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

PUBLIC COMMENT

None.

City Council Action

OTHER BUSINESS:

1. DEMONSTRATION OF THE NEW PUBLIC WORKS SUPERVISORY CONTROL AND DATA ACQUISITION (SCADA) SYSTEM.

Director of Public Works Ashcraft provided a demonstration of the new Supervisory Control and Data Acquisition (SCADA) telemetry system. He explained that this is a computerized system which monitors the status of the city's water booster pumps, water reservoirs, water wells, storm systems pumps, and the sewer lift stations.

Action: Council Members **Received** the Demonstration of Public Works SCADA System. No action taken.

FUTURE COUNCIL-INITIATED AGENDA ITEMS No items were identified.

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 4:40 p.m.

MINUTES RECORDED AND PREPARED BY:

MOIRA MALONE, DEPUTY CITY CLERK

**CITY OF MORGAN HILL
SPECIAL CITY COUNCIL MEETING
MINUTES – AUGUST 25, 2004**

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 7:01 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Sellers, Tate and Mayor Kennedy
Absent: Council Members Carr and Chang

DECLARATION OF POSTING OF AGENDA

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor Kennedy, Mary Ellen Salzano led the Pledge of Allegiance.

PROCLAMATION

Mayor Kennedy presented a proclamation to Rosanne Macek, Morgan Hill Children's Program Librarian, recognizing the month of September as *Library Card Sign-up Month*.

Ms. Macek thanked the City Council and the Morgan Hill Unified School District for its support of this program. She also thanked Mervyn's for the grant that made this program possible. She said that it is the Library's goal to have 80% of the K-3 children in Morgan Hill become regular library users. She indicated that the Library is offering to send a community leader or a librarian to the classroom to read to the children and to promote library cards. If any Council members are interested in participating in this effort, she requested that she be contacted.

ADJOURNMENT

There being no further business, Chairman/Mayor Kennedy adjourned the meeting at 7:09 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK

**CITY OF MORGAN HILL
SPECIAL CITY COUNCIL MEETING
MINUTES – AUGUST 25, 2004**

City Council Action

WORKSHOP: Coyote Valley Specific Plan

The Special Meeting of the City Council scheduled for August 25, 2004 was cancelled due to the lack of a quorum.

Mayor Kennedy and Council Member Tate met with Steve Kinsella, President Gavilan College; Jack Faraone, Coyote Valley Landowner; Don Gage, Santa Clara County Board of Supervisors; Alex Kennett, Chamber of Commerce; Shelle Thomas, Morgan Hill Unified School District Board Member; Dr. Carolyn McKennan, Superintendent of the Morgan Hill Unified School District; Connie Ludwig, San Martin Neighborhood Alliance; and Shanna Boigon, South County Realtors Association, to discuss the City of San Jose's proposed Coyote Valley Specific Plan and South County's issues of concerns.

Mayor Kennedy presented an update on the discussions with City of San Jose Mayor Ron Gonzales held earlier in the day. Also, discussed was the letter dated August 13, 2004 to Mayor Gonzales addressing significant issues relating to the Coyote Valley Specific Plan.

It was the consensus of those in attendance to schedule a meeting following receipt of a response to the August 13, 2004 letter; City of Morgan Hill staff to coordinate the meeting.

PREPARED BY:

IRMA TORREZ, CITY CLERK

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – AUGUST 18, 2004**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 5:37 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Tate and Mayor/Chairman Kennedy
Arriving late: Council/Agency Members Chang (arrived during Closed Sessions) and Sellers (arrived at 7:15 p.m.)

DECLARATION OF POSTING OF AGENDA

Deputy City Clerk/Deputy Agency Secretary Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

CLOSED SESSION:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 4

2

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Legal Authority: Pursuant to Government Code 54956.9(a)
Case Name: San Jose Christian College v. City of Morgan Hill
Case Number: Ninth Circuit Court of Appeal, No. 02-15693

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code section 54956.9(a)
Case Name: Klaver v. City of Morgan Hill
Case Number: WCAB SJO 241834; San Jose Board
Attendees: City Manager, City Attorney, Human Resources Director

4.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority: Government Code 54956.8
Property: 215 Tennant Avenue, APN: 817-04-002
Negotiating Parties:

For City:	City Manager, Director of Public Works, City Attorney, and Attorney Gale Connor
For Property Owners:	Robert and Teresita Carrasco and Bruce Tichinin
Closed Session Topic/Under Negotiation:	Price and Terms of Payment

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 5:38 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:02 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced there were no reportable actions.

SILENT INVOCATION

Mayor/Chairman Kennedy invited all those present to join in a silent invocation.

PLEDGE OF ALLEGIANCE

Mayor/Chairman Kennedy led the Pledge of Allegiance.

PRESENTATIONS

Ms. Kriss Costa, County Community Resources Specialist from Santa Clara County Vector Control District, presented a report on the status of West Nile virus in Santa Clara County. She stated that this disease cannot be spread by casual contact. Those at high risk are persons over 50 years of age, and those with a compromised immune system. Only 20 % of persons infected will show mild to moderate symptoms. Of those, less than 1% will have the most severe reactions of swelling of the brain and spinal column, paralysis and possible death. She stated that the County wants people to be concerned, but not panicked. To date, there have only been 189 human cases in California, with 5 deaths, which occurred in southern California. She stated that the disease is spreading quickly through the state. She reported that the disease does affect horses, and since our area has a large equine population, she recommended that horse owners have their animals vaccinated as soon as possible. This vaccine is 95% successful in preventing the disease in horses.

She reported that the pattern for the spread of the disease is that it first appears in the wild bird population, then horses, then humans. They have found 8 infected birds in the County, and they were

widely scattered throughout the county, which leads them to believe these were migratory or transitory birds. So far, no infected mosquitoes have been found through testing, but once the disease affects the mosquito population, then it is here to stay.

The County Vector control is focusing on the West Nile Virus. They are treating all known sources for mosquitoes, all sources reported by citizens, and trapping and testing adult mosquitoes on a weekly basis. The County is requesting that residents do all they can to assist in fighting this disease by eliminating any sources of standing water; calling Vector Control about abandoned pools or spas that need to be treated; calling if they are being bothered by mosquitoes so they can be eliminated; and by being proactive in sweeping away any water they see standing in gutters or streets. They can also report any dead birds, but only the following species: Ravens, crows, jays, magpies, and all birds of prey. The birds cannot have been dead for more than 48 hours. Citizens can obtain a copy of the protocol for handling the birds, and do not need to be concerned about contracting the disease through handling the dead birds. Bird collection and testing will only continue until the disease starts showing up in the mosquito population; then they will focus entirely on mosquitoes.

She provided the following contact information:

State dead bird hotline: 877-968-2473

Online: www.westnile.ca.gov

Santa Clara County Vector Control District: 408-792-5010.

Mayor Kennedy asked staff to place this information on the City's website.

CITY COUNCIL REPORT

Mayor Kennedy reported on the Coyote Valley Committee, made up of officials from local agencies with a stake in the planning of Coyote Valley, as well as citizens that live in Coyote Valley; and providing a forum for expression of concerns for development of Coyote Valley. He reported that this local group has held three meetings; and he has also been attending Task Force meetings and the workshops of San Jose to provide input to them.

He reported that recently the local stakeholders group produced a letter that was sent to San Jose Mayor Gonzales identifying major local issues affected by Coyote Valley development; i.e. traffic, transportation, housing, schools and college, public facilities such as parks and recreational facilities, greenbelt establishment, air quality, communications, San Martin Airport, and regional health care facilities. They have requested a strong response to these issues and asked for mitigation measure from the City of San Jose to address these serious concerns.

The Subcommittee of that group will meet with Mayor Gonzales on August 25; and there will also be another stakeholder meeting on that date at 4 p.m. at the Community and Cultural Center, if anyone wishes to attend.

CITY MANAGER REPORT

City Manager Tewes reported that he had no report this evening.

CITY ATTORNEY REPORT

City Attorney Leichter was not available on the dais to make a report at this time.

OTHER REPORTS

Council Member Carr reminded the public that school starts next week, and to be sure to watch for children on the streets. He also noted that the new Sobrato High School will be opening on August 24th.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1 – 5, 7-21, and 23, as follows:*

1. **AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF JORGENSEN, SIEGEL, McCLURE & FLEGEL, LLP.**
***Action:** **Authorized** the City Manager to Execute an Amended Agreement with the Law Firm of Jorgenson, Siegel, McClure & Flegel, LLP.*
2. **SECOND AMENDMENT TO AGREEMENT WITH THE STROMBOTNE LAW FIRM.**
***Action:** **Authorized** the City Manager to Execute a Second Amendment to Agreement with the Strombotne Law Firm.*
3. **SUBDIVISION APPLICATION, SD-04-09: MISSION VIEW DRIVE-MISSION RANCH.**
***Action:** **Took No Action**. Thereby Concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.*
4. **SUBDIVISION APPLICATION, SD-04-10: PEET-LUPINE.**
***Action:** **Took No Action**. Thereby Concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.*
5. **RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCE) 2004 QUARTERLY REPORT #2.**
***Action:** **Accepted** and **Filed** the RDCE Second Quarter Report for 2004.*

6. MONTEREY HIGHWAY SOCCER PARK UPDATE.

Action: *Considered the Status Report.*

Council Member Chang requested a status report on the Soccer Park from Recreation and Community Services Division Manager Spier.

Ms. Spier stated that this complex will be located adjacent to Sobrato High School. The Monterey Highway Soccer Foundation is in charge of the construction and maintenance of this facility.

The EIR should take about one year to complete, with construction possibly starting in August of 2005. The organization will be moving everything from the current soccer field location to the new fields. They are hopeful that they will be able to continue their parking agreement with the City of San Jose to continue to use the easement for parking.

The City of San Jose has budgeted \$300,000 for the EIR and we have budgeted \$1 million in our CIP budget for the project.

We should receive an updated schedule and business plan from the Foundation by the middle of September.

Council Member Carr expressed concern about the manner in which the City of Morgan Hill is portrayed in the report provided in the agenda packet. He does not like the implication that the City of Morgan Hill is dislocating them, and that the million dollars we have set side is our way of compensating for these actions. This is not accurate and he would like this to be rectified. The City of Morgan Hill is putting a vast majority of the funding into this project and should be better represented in their reports. He also wanted to make it clear that the lease ends this calendar year, and the relocation needs to be settled sooner than December 30, 2004 to avoid problems.

City Manager Tewes stated that the Parks and Recreation Commission will be holding discussions with them and reporting to the Council this fall.

Council Member Carr asked if the Beals Preferred Concept has been approved by the City of San Jose.

City of San Jose Council Member Charlotte Powers was present, and responded that this has not yet been approved as the City of San Jose keeps reviewing the plans and making changes. The City of San Jose has approved the 25 year lease, and the main access from Monterey Road.

Council Member Sellers asked if there would be a more formal presentation made to the Morgan Hill City Council. He stated that Morgan Hill has designated the million dollars, but the Council is awaiting clarification of how these funds are to be used so we can determine if this is how this council wants to spend the funds. In order to do this we need a more substantive report from San Jose.

Council member Powers stated that they would be happy to prepare and present that type of formal presentation, and apologized to Council Member Carr for the representation of the City of Morgan Hill

that he noted in the report. She also stated that the group that has been formed is a group of soccer leagues, not necessarily all CYSA, which has been established as a legal entity to be the party responsible for the operation, management and construction of this site.

City Manager Tewes stated that the report is correct in its statement that the City of Morgan Hill will require an executed agreement with the Foundation before the foundation can proceed.

Mayor Kennedy thanked Councilwoman Powers for coming to address the City Council on this issue at tonight's meeting.

7. **APPROVAL OF IMPROVEMENT AGREEMENT FOR THE GRANARY.**
*Action: **Approved** the Improvement Agreement and **Authorized** the City Manager to Sign the Agreement on Behalf of the City of Morgan Hill with Charles Weston and Lesley Miles.*
8. **APPROVAL OF IMPROVEMENT AGREEMENT FOR ST. CATHERINE'S DAY WORKER CENTER.**
*Action: **Approved** the Improvement Agreement and **Authorized** the City Manager to Sign the Agreement on Behalf of the City of Morgan Hill with Charles Weston and Lesley Miles.*
9. **FINAL MAP ACCEPTANCE FOR ALICANTE PHASE I (TRACT 9578).**
*Action: 1) **Approved** the Final Map, Subdivision Agreement and Improvement Plans; 2) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 3) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.*
10. **AWARD OF CONTRACT FOR SIDEWALK ADDITION AT EDMUNDSON/MONTEREY PROJECT.**
*Action: 1) **Awarded** Contract to Link Construction Co., Inc. for the Construction of the Sidewalk Addition at Edmundson/Monterey Project in the Amount of \$63,120; and 2) **Authorized** Expenditure of Construction Contingency Funds, Not to Exceed \$6,312.*
11. **APPROVAL OF PAYMENT TO SANTA CLARA COUNTY FOR VEGETATION ABATEMENT ON CITY-OWNED PROPERTY.**
*Action: **Approved** Payment in the Amount of \$47,006.43 for Vegetation Abatement in Fiscal Year 2004-2005.*
12. **ADOPT RESOLUTION APPROVING APPLICATION FOR 2005-2006 FEDERAL SURFACE TRANSPORTATION PROGRAM FOR STREET RESURFACING FUNDING.**
*Action: **Adopted** Resolution 5836, supporting the Application for Federal Surface Transportation (STP) Funding for the 2005-2006 Pavement Resurfacing Program.*
13. **YEAR END REPORT ON 2003-2004 WORKPLAN.**
*Action: **Accepted** Report.*

14. **APPROVAL OF ANNUAL LANDSCAPE MAINTENANCE SERVICES AGREEMENT FOR THE COMMUNITY AND CULTURAL CENTER AND AQUATICS CENTER.**
*Action: 1) **Approved** Annual Landscape Maintenance Agreement for the Community/Cultural Center and the Aquatics Center; and 2) **Authorized** the City Manager to Execute the Agreement on Behalf of the City, Subject to Review and Approval by the City Attorney.*
15. **AMEND CONTRACT FOR THE TENANT IMPROVEMENTS BY TRI-SIGNAL INTEGRATION, INC. FOR THE NEW POLICE FACILITY.**
*Action: **Authorized** the City Manager to Amend and Approve an Additional Purchase Order for the Purchase and Installation of Card Readers, Closed Circuit TV, Fire and Security Alarm Systems Purchased for the Tenant Improvements at the New Police Facility, Subject to City Attorney Review and Approval.*
16. **APPROVE FIRST AMENDMENT TO ARCHITECTURAL CONSULTANT AGREEMENT FOR INDOOR RECREATION CENTER.**
*Action: **Authorized** the City Manager to Amend Noll & Tam's Consultant Agreement for an Additional \$35,000 for FF&E Selection, Specification, and Drawings and to Revise the Consultant's Scope of Work for Architectural Services Needed in Lieu of LEEDS Design, Subject to City Attorney Review and Approval.*
17. **APPROVE AUDIOVISUAL CONSULTANT AGREEMENT FOR INDOOR RECREATION CENTER.**
*Action: **Authorized** the City Manager to Negotiate, Prepare and Execute the Professional Services Agreement for Audiovisual Consultant, Lewitz and Associates for Consulting Required at the Indoor Recreation Center, Subject to City Attorney Review and Approval.*
18. **ADOPT ORDINANCE NO. 1685, NEW SERIES.**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1685, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1487, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-97-22: SPRING – MALONE/FILIPOWICZ TO ALLOW FOR A ONE YEAR EXTENSION OF TIME FOR A SINGLE CUSTOM LOT BUILDING ALLOTMENT RECEIVED IN THE 1998-99 RDCS COMPETITION. (APN 767-53-012).***
19. **ADOPT ORDINANCE NO. 1689, NEW SERIES.**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1689, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN FOR THE DE PAUL (FORMERLY SAINT LOUISE) HEALTH CENTER INCORPORATING UP TO A 70-UNIT CONGREGATE CARE FACILITY, 94 UNIT ASSISTED LIVING FACILITY, A 6,050 SQUARE FOOT CHILD***

***CARE FACILITY AND A 13,560 SQUARE FOOT COMMERCIAL OFFICE BUILDING.
(APNs 728-031-005, 006, 012 & 013).***

20. APPROVED MINUTES FOR SPECIAL CITY COUNCIL MEETING OF JUNE 26, 2004.

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member and seconded by Agency Member, the Agency Board unanimously (5-0) Approved Consent Calendar Items , as follows:*

21. DOWNTOWN PARKING RESOURCES MANAGEMENT PLAN.

Action: *Authorized the Executive Director to Negotiate and Execute a Contract with DKS Associates in an Amount Not to Exceed \$49,280, Subject to Agency General Counsel Review and Approval.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the City Council/Agency Board unanimously (5-0) Approved Consent Calendar Items 21, as follows:*

22. APPROVED MINUTES FOR JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING OF JULY 21, 2004, AS AMENDED.

Council Member Sellers requested that the City Clerk amend these minutes to add the following statement to page 13, paragraph 3: “Council Member Sellers also commented that he had requested to be the initial speaker on the item because he had not had a chance to weigh in on this issue.”

23. APPROVED MINUTES FOR JOINT REGULAR REDEVELOPMENT AGENCY, SPECIAL CITY COUNCIL, AND SPECIAL FINANCING AUTHORITY COMMISSION MEETING OF JULY 28, 2004.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council unanimously (4-0, with Tate absent) Approved Consent Calendar Item 24, as follows:*

24. APPROVAL OF JOINT USE AGREEMENT FOR WEST LITTLE LLAGAS CREEK TRAIL.

***Action:** Approved Joint Use Agreement with Santa Clara Valley Water District for West Little Llagas Creek Trail.*

City Council Action

PUBLIC HEARINGS:

25. ZONING AMENDMENT, ZA-04-07: DIGITAL-VENTURE PROFESSIONAL CENTER
(Continued from 7/28/04).

Planning Manager Rowe presented the staff report as provided in the agenda packet.

Council Member Carr asked what the objection was which caused the NO vote at the August Planning Commission meeting.

Mr. Rowe explained that the objection was to the incorporation of the medical uses and the conversion of land to non-industrial. One Planning Commissioner did not agree with this.

In response to a question by Council Member Carr, Mr. Rowe explained that all currently pending requests for conversion of industrial land were considered in staff's calculation of the loss of one year's worth of industrial land.

Mayor Kennedy opened the public hearing and asked if the applicants, Mr. Rob Eves and Mr. Brian Kelly, would like to be the first to speak on this item.

Mr. Eves presented the Council with copies of research he has done on the current vacancy rate of space in Silicon Valley, and stated that the current vacancy rate is the highest in history and is equivalent to 40 of the San Francisco Bank of America towers standing vacant. He stated that local brokers estimate it will take 20 to 25 years before Morgan Hill's vacant industrial land is absorbed, so he feels that his small building will have very little impact.

On the issue of the MRI and surgery center, Mr. Eves stated that he has met with both De Paul and O'Connor Hospital, and they have asked him to remove these facilities from his plan. They told him that they may be able to bring a surgery center to Morgan Hill in about 1 year; so at their request, and in the interests of moving his application forward, he did remove the surgery center from his plans. He left the MRI Imaging Center in because the 20 or so doctors he is trying to attract to his facility have told him that the MRI center is a key component for their decision to locate in his facility. He urgently requested that the MRI not be pulled from his application as that would have a very adverse impact on the project as a whole. This use is allowed under current zoning codes, and this project has been approved by the Planning Commission twice. He requested that they approve this Medical Center application, and stated that he would be able to bring doctors and dentists to Morgan Hill immediately.

Andrew Barna, representing the Daughters of Charity Health Care System, stated that health care is a vital community resource, and he thanked the Council for taking the time to attend to the development of this very complex resource. He stated that physician offices are in the best interests of the community, and that this project's condominium style of offices would work great for physicians. He stated that the MRI and the ambulatory surgery center, however, would not be appropriate for this site. He reported that there are federal laws prohibiting physicians from referring patients to facilities in which they have a financial ownership/interest; and the question arises as to who would own this MRI facility. There is also a serious concern that services such as an MRI and ambulatory surgery are the revenue producing services of medical care which subsidize other less cost effective areas of medical services; and if you separate them out from the less cost effective services, the financial viability of a more comprehensive facility like De Paul Health Care will be affected in a detrimental fashion. He stated that the Federal Government has enacted legislation in the Medicare Modernization Act or the Medicare Prescription Drug Act which expressly prohibits the development of ambulatory surgery centers in specialty hospitals for a period of 18 months because of this detrimental impact that they have on other providers. Mr. Barna requested that the Council allow for the medical offices, but not the MRI Center or the ambulatory surgery center since these would not be in the best interests of health care services in Morgan Hill.

Joe Mueller, speaking on behalf of the Community Health Foundation, stated that the City Attorney has advised him he may have a conflict in speaking on this issue. He stated that he was unsure of whether to proceed with his statement.

City Attorney Leichter stated that she is unsure of Mr. Mueller's financial compensation from the Health Care Foundation and other entities, and she would need to discuss this with him in depth, as well as his role as a Planning Commissioner appearing before the City Council, in order to fully analyze the impact of these issues on this particular zoning hearing which the Council is considering this evening. She does not have the benefit of adequate time to do that analysis at this time, but she suggested that they take Mr. Mueller's comments and then, subject to her determination on the conflict of interest, Mr. Mueller can choose to have his comments stricken from the record or not.

Mr. Mueller stated he wanted to speak on just the ancillary services of this application and the impact they would have on the ability to deliver a broader range of services at the De Paul Health Center. There are only some services that make money, and these services allow a health provider to make available a broader range of services. If these profitable services are fragmented, then we won't get the range of services from a health care provider that we might otherwise receive. An MRI or surgery center are the two most profitable out patient services that are delivered, and so there would be a direct impact on the broad range of health services that could be potentially provided at the De Paul Center. He is not questioning that the "for sale" doctor's offices might be a benefit to Morgan Hill. He is questioning only the ancillary services. He questioned the necessity of these services being provided by this particular facility when these services can be provided, and are planned to be provided, at other locations in the city. The general welfare must be examined as well. If we reduce the overall availability of services because we have fragmented them by approval of this request, there may be a question about whether there is enough public benefit to grant this request.

Bernie Mulligan, representing the Morgan Hill Community Health Foundation, stated that he feels this is a critical juncture for Morgan Hill. He is pleased with the pace that the Daughters of Charity are moving forward. They have several occupants in their building already, and he believes that doctors like to be located near a hospital. He has no objection to the approval of the professional center for the physicians, but does object to this facility being given the money making operations that a hospital needs, which could then jeopardize the hospital. He opposes the project as presented, and if it is allowed to go forward it will extend the time for acute care to return to Morgan Hill.

George Chiala appeared as a concerned citizen. He stated that he did serve on the Morgan Hill St. Louise Task Force and worked hard to bring the De Paul Health Center as a provider to Morgan Hill. He is concerned that this MRI center would dilute the efforts already put forward on behalf of the De Paul Center. He is concerned about bringing in competition in the MRI area, which could cause problems for both entities. He asked for support for the efforts already put forward and requested that Council not allow the MRI center to be approved as part of this project. Even though there is a lot of empty space in Morgan Hill, we don't want to end up with an empty hospital. Approval of the MRI in this facility would take the profit center out of the hospital that supports those areas that are not so profitable.

Dick Oliver stated he recently had to take his grandson for emergency care, and had to drive to Gilroy to get it. Then he had to go to Los Gatos for an MRI. He is very anxious to get an MRI at the De Paul center. If the present zoning laws did allow an MRI for this project under discussion, this item would not even be before the Council this evening. He feels that Mr. Eves has made a good case for allowing doctors to be able to own their own offices at this site, and that there is a need and a benefit to the community in this; but he does not feel that there is a community benefit in the case of an MRI or surgical center at this project site. The MRI equipment is very expensive, and our community cannot support two such facilities. If we lose the chance to put the MRI at the De Paul facility, we will probably be delayed extensively in getting an urgent care facility there. He supported approval of the doctor offices as a clear benefit to the community, but not the MRI as part of this request.

Dr. Robert Moulthrop, a dentist in Morgan Hill, stated that he is very excited about the Venture Corp. proposal. He served on the St. Louise Community Advisory Committee before, during, and following construction of the hospital. He remembers that there was a great deal of volunteer work done by citizens and physicians to treat indigent residents, only to have St. Louise pull the rug out from under them when they chose to close their doors on the basis of a purely business move, leaving everyone here in a lurch. He feels that the notion that all health care services must be centered in the De Paul Health Center does a disservice to the community and is not in keeping with other businesses that have had to compete. He wants all businesses in this town to be successful; however, he feels that each one needs to be able to stand and succeed on their own. He feels that the opportunity to own their own buildings is a great opportunity for Morgan Hill physicians and will draw physicians to the area. He noted that De Paul has not even installed a permanent sign along Highway 101, and it is his belief that they are just testing the waters here and are ready to close their doors at a moments notice when life gets tough for them. He believes they have had ample time to install an MRI unit, but have not done so, and he questions why they have not done so. He has confidence in the Council's leadership that the Venture Corp will be allowed to proceed with their proposal, and that the Council will encourage future development of a surgery center at that same location.

Brian Kelly, applicant from Venture Corporation, stated that he feels that the Council cannot extrapolate the absorption of industrial land from the past into the future because it will not be an accurate picture. He has been meeting with doctors interested in their project, and feels that they like the idea of having an MRI easily accessible to them in their center. He reminded the Council that they have already removed the surgical center from their project. He feels that it is critical that the MRI and lab be allowed in their center, because many of the specialists have said they will not come to this building unless the MRI lab is there, and the MRI lab has said they won't come unless they have the specialists there. So they need each other to survive, and he encouraged the Council to allow the MRI center to remain a part of the project.

Glenda Garcia, representing the Community Health Foundation Board, stated she was also very involved in the founding of the St. Louise Hospital; and that even though the Daughters of Charity broke her heart when they left, they have now come back. She stated that we cannot have a hospital unless the hospital can make money, and she will not be able to take care of the sick and the poor unless the departments there are making money. Those money making departments are the lab and the MRI, and it needs to be in the hospital in order to serve the sick and poor of this community, which is what she cares the most about. She highly recommends to the Council that they make a decision that will allow the De Paul Health Center to be a success.

Mayor Kennedy offered Mr. Eves an opportunity at rebuttal. Mr. Eves declined to make further comment at this time.

No further comments being offered, the public hearing was closed.

Council Member Carr asked Planning Manager Rowe to review the zoning issue.

Mr. Rowe stated that the medical-dental testing laboratories are permitted uses in a light industrial, but those are the types of uses that don't provide patient care. The medical-dental offices are the reason this issue is before the Council this evening. Venture Corp. had come before the Planning Commission on September 9, 2003, for a Use Determination to ask them to consider if this proposed use was appropriate for this zoning district. The Planning Commission agreed that the MRI could be considered as a conditional use in the business park at that time, but an application was never submitted to actually obtain the Use Permit to approve the MRI facility. Instead that request came to the City packaged in the PUD amendment application that is before the Council this evening. Both the medical offices and the MRI facilities uses are not permitted under the current zoning, and can only be allowed through the amendment to the PUD. In regard to the discussion of an ambulatory surgery center, the Building Code would require the building to be classified as under institutional group 1 occupancy. As has been recommended by the Planning Commission to the Council, an ambulatory surgery center would be expressly prohibited at this time and would require further amendment to the PUD. The MRI facility is the recommendation of the majority of the Planning Commission.

Council Member Sellers asked Mr. Barna if there are plans for a similar facility to be built at the De Paul Health Center, and what the timeline for construction would be.

Mr. Barna responded that there are plans to include a comprehensive diagnostic imaging center at the De Paul Health Center, which does include an MRI. They are currently in the process of completing the business plan, which he believes will then be submitted in October to the Daughters of Charity Health System Board for approval. Upon a favorable outcome there, they would then begin the process of implementing their services. Services would take between 6 and 15 months to develop.

Mayor Kennedy asked Mr. Barna to clarify the new law that restricts doctors from operating an MRI facility.

Mr. Barna stated that the Medicare Modernization Act restricts physicians from owning specialty hospitals; such as the ambulatory surgery center. There are standing laws which restrict physicians from referring patients to designated health care services in which they have ownership interest; so those physicians that move into this medical office building could not refer patients to this MRI if they own the MRI.

Council Member Carr asked for an explanation of what it takes to operate an MRI facility.

Mr. Barna stated that the MRI is administered by a radiology technician and then the results are interpreted by a radiologist. The radiologist would be able to read this image off-site because of new technologies available. Then the radiologist writes his report and sends this to the physician. Mr. Barna also stated that the MRI is only one of a host of diagnostic procedures used by physicians to diagnose their patients.

Mayor Kennedy asked Mr. Eves, in regard to these laws, how they have dealt with this issue in their project.

Mr. Eves pointed out that this law was only established to stand for 18 months, so by the time the new facility is in place, this would no longer be an issue. He felt it does not apply to them, since they have withdrawn their application for a surgical center from their project, and no other aspect of their project would be impacted by this law.

Mr. Eves also questioned if there is a plan for an imaging center at De Paul Health Center. He stated that they told him they do have a plan, but do not have the money to proceed at this time. He was told that they would need something in the range of \$7 million dollars, and they have no funds or budget for it at this time. He stated that they have high hopes and grand goals, but it has been ongoing for a number of years with nothing happening. He also wanted to make the Council aware that, in the case of his proposed MRI facility, the applicant is a radiologist and will be on site to do the interpretation of all MRI's.

Mayor Kennedy stated he wished to disclose that he had met with the applicants, some of the doctors, and Mr. Barna and Joann Ellen of the O'Connor Hospital and De Paul Medical Center to hear arguments from both positions.

Council Member Chang stated that she also had met and held discussions with them. She also stated that she is not yet clear on the restrictions on physician investment in the specialty hospital. She asked if

she is correct in understanding that a physician cannot submit a claim to Medicare if he owns interest in the facility; and if the radiologist owns the building, can he submit the claim to Medicare?

Mr. Barna stated that the radiologist can submit a claim for his services to Medicare because he is not the referring physician. If the referring doctor has ownership interest in the facility, then that physician cannot refer any patients to that facility for services.

Mayor Kennedy asked City Attorney Leichter for clarification on a statement that she had made to him earlier today that competition and economics cannot be the basis for denial of a zoning change.

City Attorney Leichter stated that these cannot be the sole basis for a zoning decision. She stated that when making a zoning decision such as this, the Council is considering the broader general welfare of the community in determining where health services are placed within the community, whether they are clustered, whether they provide easy access to freeways, is there adequate parking, etc. There are issues that have been raised by Mr. Mueller, for example, that go beyond the pure economic interests. To the extent the Council would be making this decision that the MRI at De Paul would be economically unfeasible, and that would be the sole basis for their decision, she would advise against that. It needs to be based on more than that.

Council Member Sellers asked the City Attorney if it is within the Council's purview to approve the doctor office facility now, but to defer consideration of the MRI facility for a period of time.

Ms. Leichter stated that they can approve part of the project, or table part of it, and that would be within Council discretion. She suggested it may be more expeditious to simply deny it so that the applicant can pursue their appeal rights if they desire to do so.

Council Member Sellers, relating his remarks to the desire of many citizens to get a Trader Joe's in Morgan Hill, stated that the Council does not get to pick what will come to Morgan Hill; but, on occasion, they do get to decide what does not get to come to town. If the Council feels there is something that will not be for the betterment of the community the Council gets to act. As the City Attorney has pointed out, the decision cannot be a purely economic decision; and as he has often pointed out when one coffee shop gets upset because another coffee shop is moving into town, that it is not for the Council to just keep out competition. He stated that it appears obvious that we need an MRI facility in town, sooner rather than later, and that it is going to be a lynchpin for the development of Morgan Hill's health care facilities. This is evident from the discussion on both sides of this issue, and the Council's job is to figure out how to expedite that. He is inclined to give an opportunity to the De Paul Health Center to perform, because in the long term that seems to be in the best interests of the community since it would further healthcare and medical services. However, if we say we are not going to allow for the free market to place this facility in town through this project without any specific timeline commitment from De Paul, there is the potential for this to languish and we could end up three years from now without an MRI facility and perhaps relatively few doctors' facilities. It sounds to him as if the doctors who have shown interest are attracted by the new MRI facility, but he not convinced that it has to be at a specific location. It sounds to him like De Paul is going to have a plan by the end of the year; and if they can provide a plan that is substantive, with timelines and financing, that such a plan should give the Council confidence that there will be an MRI in place in the 9 to 15 month timeline indicated by Mr.

Barna, which would be the end of next year. That seems to be reasonable to him. It places pressure on De Paul to produce a document that says they are going to produce an MRI facility in a relative short period of time, so that Venture Corp. can use that to market their buildings to the doctors who might be interested in buying their buildings. He is not comfortable giving an unlimited carte blanche to De Paul to decide to build the MRI whenever they want. As good of neighbors as they have been over the last few months, they need to know we have been down this path before and we need some quantifiable landmarks produced. If they cannot do that, we can allow for this other facility to come to Morgan Hill.

City Attorney Leichter stated that if he is suggesting that if there is not an MRI at the De Paul center within “x” amount of time, the Council would allow the use at this site; then that could be accomplished by stating that this use will commence on “x” date if there is not already an MRI facility at another location within the City limits.

Council Member Tate stated that the Council had spent considerable time recently writing policies to protect Morgan Hill against what happened when we lost the hospital. This project could create a direct conflict, and the policy that they established was to steer around such conflicts. He stated that he liked Council Member Seller’s suggestion. The City has put everything behind the Community Health Foundation, and now we have a competing offer to bring doctors into town, which was always the highest priority. Everybody agrees that we need to support both efforts to bring doctors into town, but that there could be the element of competition that drives one or the other, or both, out of business if we go both ways. This is what the Council has been trying to avoid. The problem is that if we put all of the support behind De Paul, and they tell us that they might be able to do something in 15 months, we could lose the opportunity offered by this project to have a radiologist in town who is ready to come right now. He is supportive of Greg’s idea that we need to insist that De Paul perform, and to give them some time to do that; while at the same time not blocking this project entirely in case De Paul does not perform.

Council Member Carr agreed that this is a great suggestion. He feels that competition is going to get us where we want to be, and the competition brought by this proposed project allows the City to hold De Paul’s feet to the fire, to back up the Community Health Foundation with the work they have been doing, and finally have something to bring De Paul to the table and give them a certain amount of time to perform. We need to give them some time to figure out how they are going to perform, but he is not sure that giving them until the end of the year is a good idea, since that may be too much time. He would like to move forward as quickly as we can on the office portion of this project. He was concerned about the loss of industrial land, but Mr. Rowe pointed out that it is not going to be that much of a loss. He understands that moving forward with just a part of this project may change the economics of the project, but he does not want to hold up the doctors’ offices while the city works on this timeline with De Paul on the MRI. He feels that this partial approval to allow the offices is what the Council should do this evening.

Mr. Barna was asked to comment on the timeline for the Daughters of Charity. He stated that he is hesitant to make time commitments for them, but that this does sound like a potential idea for resolving this situation. The current time frame is to take this proposal to the Daughters of Charity Board in October or November. He wants to be sure to give them enough time, but certainly by the end of the year they will have an idea and a direction of the very specific services that they will be implementing in

the De Paul Health Center, and the construction timeline that will indicate when they will be able to open the services.

Mayor Kennedy asked him if the Council does approve this project tonight, with the MRI being conditioned on Daughters of Charity decision to proceed with the MRI by November, would that be something he could provide an answer to, or would he have to go back to the Daughters of Charity Board for a response in December.

Mr. Barna stated that he would have to work with the architects and construction staff to be able to give the Council a more definite timeline of when that phase of construction would occur. He does not know that diagnostic imaging would be the first thing they would choose to implement. An urgent care center might be their first priority, and the MRI might be in the 6 to 12 months timeline. What they will be able to tell the Council by the end of this calendar year is what services they do plan to provide at De Paul, and how they will be phased into service. The MRI may not necessarily be the first item to come on line; and though it could be, he is not in a position to make that commitment tonight.

Council Member Chang asked if it would be December 1st or 30th that the Daughters of Charity would provide an answer.

Mr. Barna stated that the Board meets at the end of November, and it would be difficult to report to the Council by December 1, so he feels that December 30 would be fairer. After the November meeting they could give the Council a definite timeline for the particular services they plan to provide at De Paul.

Mayor Kennedy stated that there is a need for these facilities, as demonstrated by the fact that there are two different business entities that are willing to go forward. The City has waited a long time for the Daughters of Charity to act, and in the offer of Venture Corporation, we essentially have a bird in the hand. It is very difficult not to accept this offer, but he is willing to support a compromise solution which allows the medical office building to go forward while giving the Daughters of Charity a deadline of December 31 to say yes or no on the MRI. If the answer is not within a reasonable, committed time frame, then we would proceed with the MRI at the Venture project.

Mr. Eves commented that the Council's comments are clear and understandable, and he would support their idea, even if this goes into January 2005. It will clearly adversely impact the marketing outreach to the medical community, but they will live with that. The only question he would ask is what exactly happens on December 31? If De Paul says yes, when would they build it? If they say no, does that mean they are not going to ever build it, or just not this month? He can agree to waiting until the end of the year, provided that De Paul will step up and provide written notice that they agree to build, and commit unconditionally within a limited time frame to do so. Also, what will they provide as a guarantee that they will build the MRI facility, so that Venture Corp. does not lose the doctors they already have line up to come here.

Mayor Kennedy stated that the City would have to have a legally binding agreement from them.

City Attorney Leichter stated that to make the expectations clear for all parties, the Daughters of Charity Board needs to prepare a substantive plan acceptable to the Council with deadlines and financing to

build an MRI by a certain date. When the Council considers what they present in December, then they can decide if it is acceptable, or decide that it is not substantive enough, at which point the zoning decision can be reconsidered.

Council Member Carr asked Mr. Eves if the building they are proposing needs to go through a State approval process.

Mr. Eves responded that the building did not require State approvals.

Council Member Carr asked how quickly they could be up and running if, in January, the Council approves the building Venture Corp. is proposing.

Mr. Eves stated that, assuming the office building is approved tonight, he would guess 90-120 days from now they would be under construction, and it would take about 6 months to complete the building, which puts them around May, 2005. That means 9-10 months from today the doctors and dentists would be moving in.

Council Member Tate asked for more discussion on the timeline. He stated he is not happy with waiting until the end of the year for the response from De Paul, and would like to request their response by the end of November. If that means they have to have extra meetings to make their decisions, then that is what they have to do.

Council Member Sellers stated that there are significant deadlines here. The Daughters of Charity need to commit that they are going to build an MRI, in a reasonable time frame, and identify the money to do so. All this needs to happen as quickly as possible, with the understanding that as an institution they have things they have to deal with. He would also hope that Mr. Barna can convey to them that the Council is considering a variety of options in terms of how the city will proceed, and that De Paul may want to modify their business plan so that the MRI is expedited. It would also be helpful if they could provide some type of written communication of their plans to build the MRI which can be given to the doctors as a marketing tool to draw them to Morgan Hill. All of this needs to occur this calendar year, with the key being how quickly the MRI can be expedited.

Council Member Carr stated that he agrees with Council Member Tate that this process needs to be stepped up and this is our opportunity to hold their feet to the fire on some things we have been talking about. He does not think it is too difficult to request that this be produced by the end of November or first of December. He stated we need to be clear about what we are asking for at that time. He disclosed that he too has met with the applicant and representatives of De Paul. It is his understanding that they are going to come back to the Council with a phasing plan of what they are going to be doing at both the medical office building and in the hospital structure itself. He is willing to wait on that plan. Even though we have a proposal for an MRI before us tonight, that may not be the first priority of De Paul. And when we consider what our public policies are in health care, an MRI may not be our first priority either. At least at the De Paul site. If they come back and tell us they can get an urgent care center up and running in three months, but it is going to take 18 months to get an MRI going, then it is a different discussion for the Council. He does not think we should be pushing De Paul to set the MRI as the first priority because we are not health care experts. He does want De Paul to know that Mr. Eves has stated

he can produce the MRI in 9 months, so they know that this is something that this community is very interested in and now has that option available in a stated timeline. We need to be careful what we are asking De Paul to provide on December 1. We will hear a plan of what they are going to do with the medical center and somewhere in that plan the MRI will be included. We will then have to decide if that is quick enough or not, and decide whether we want to go with the other proposal to change the zoning and allow someone else to compete in that market.

Mayor Kennedy agreed with Council Member Carr's comment, and stated that he does not want the message to go out that the number one priority is getting an MRI in Morgan Hill. We have indicated that our highest priority is getting urgent care and primary care physicians, and that may be the plan they come back with.

Mayor Kennedy suggested a motion to proceed with the zoning change to allow the medical office building, with the condition that the MRI facility be placed on hold for now. He asked the City Attorney for assistance with the correct wording.

City Attorney Leichter stated that there are four actions that need to be taken. First the public hearing needs to be closed. Then they need to adopt the Mitigated Negative Declaration. When Council gets to actions on the ordinance, the approval would be conditioned, as she understood the Council Member's various ways of stating this, that the De Paul Health Center should come back to the Council by the end of November with a plan which demonstrates when they will install an MRI, the financing, and that demonstrates a substantive plan to achieve those goals. The approval of the zoning would be conditioned on this occurring. It would be the sole discretion of the Council as to whether that plan by De Paul is acceptable. If it is not acceptable, the Council could reconsider the zoning on the MRI, unless Council just wants to have a de facto approval of the MRI at the Venture Professional Center.

Council Member Sellers stated that he feels it is important that the Council give reconsideration at that point because there are too many variables.

Mayor Kennedy closed the public hearing.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Directed** Staff to agendize an amended ordinance consistent with the Council's direction on the next Council meeting agenda.*

Action: *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council unanimously (5-0) **Directed** Staff to agendize the response from De Paul Health Center on the December 1, 2004 meeting.*

Mr. Eves asked for verification that the MRI imaging center has not been included in the approval this evening, but perhaps could be approved at the meeting in December; and that the doctors' offices have

been approved and Venture Corp. can go forward with architectural review. And finally, is it approved for them to include an ordinary medical laboratory in the medical building?

The Council did confirm for him that he is correct.

26. PROTEST, PRO-04-03: ANNEXATION, ANX-03-01: HILL-GERA.

Planning Manager Rowe presented the staff report as provided in the agenda packet.

Mayor Kennedy asked if there was anyone present to protest this annexation. Since no one spoke in protest of this annexation, Mayor Kennedy stated that the Council action required was to terminate the annexation protest proceeding, and allow the annexation to proceed.

City Attorney Leichter stated that the Council did not need to adopt the resolution before them which contains reference to the assessed land value, but there needed to be a motion to terminate the proceedings and allow the annexation to proceed.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Mayor Kennedy and seconded by Council Member Tate, the City Council unanimously (5-0) **Terminated** the Protest Proceeding, and **Allowed** the annexation to proceed.*

**27. DEVELOPMENT AGREEMENT AMENDMENT, DAA-03-12: PEET-LUPINE.
Ordinance No. 1690, N.S.**

Planning Manager Rowe presented the staff report as provided in the agenda packet.

Mayor Kennedy opened the public hearing.

Mr. Dick Oliver, the applicant, stated that he was present if the Council had any questions for him. The Council had no questions.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance.*

Action: *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council **Introduced** the Ordinance, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1660, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-12: PEET – LUPINE INVESTORS/BORELLO (APNs 728-34-002 & -003) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None. Ordinance No.1690, N.S.***

28. DEVELOPMENT AGREEMENT AMENDMENT APPLICATION, DA-03-13: MISSION VIEW DRIVE-MISSION RANCH. Ordinance No. 1691, N.S.

Planning Manager Rowe presented the staff report as provided in the agenda packet.

Mayor Kennedy opened the public hearing.

Mr. Dick Oliver, the applicant, stated that he was present if the Council had any questions for him. The Council had no questions.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** the Ordinance, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1658, NEW SERIES, TO AMEND DEVELOPMENT AGREEMENT DA-03-13 FOR APPLICATION MP 02-15:***

MISSION VIEW-MISSION RANCH TO ALLOW FOR THE INCORPORATION OF 22 SUPPLEMENTAL BUILDING ALLOCATIONS AWARDED IN THE 2003 RDCS COMPETITION. (APN 728-32-008 & 009) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None. Ordinance No. 1691, N.S.

29. ZONING AMENDMENT APPLICATION, ZA-04-04: CITY OF MORGAN HILL-CENTRAL COMMERCIAL RESIDENTIAL ZONING. Ordinance No. 1692, N.S.

Planning Manager Rowe presented the staff report as provided in the agenda packet.

Mayor Kennedy opened the public hearing.

No comments being offered, the public hearing was closed.

Council Member Sellers stated that he appreciated the Planning Commission's modification that allowed restaurants and entertainment uses, since those are uses the Council wants to encourage and considers an integral part of downtown development, especially on the Monterey corridor.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council **Introduced** the Ordinance, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 18.24 (CENTRAL COMMERCIAL/RESIDENTIAL DISTRICT) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL, by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None. Ordinance No. 1692, N.S.***

30. LIBRARY DEVELOPMENT IMPACT FEE ADJUSTMENTS. Resolution No. 5837.

Jack Dilles presented the staff report as provided in the agenda packet.

Mr. Dilles also reported that he had done an informal survey today by calling other cities in Santa Clara County to learn if they charged library impact fees. He had reached 9 cities, and learned that 8 of those do not have such fees. The only city with such fees is the City of Gilroy, and their fees of \$1,810 for a single family home and \$1,290 for a multi-family home, are significantly higher than those being proposed here tonight.

Council Member Carr asked Mr. Dilles how the calculation of the proposed fee took into account the fact this library will serve an area that is greater than the city limits of the City of Morgan Hill.

Mr. Dilles explained that the fees are based on the urban growth boundary, but nothing outside of that boundary. He explained the methodology used in determining the charges, and stated that he did not believe it would make a difference in the fees to reduce the area in which they are charging the fee.

Mayor Kennedy opened the public hearing.

No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** the Resolution.*
Resolution No. 5837.

31. WATER SUPPLY SHORTAGE OPERATIONS PLAN. Resolution No. 5838.

Director of Public Works Ashcraft presented the staff report as provided in the agenda packet.

Mr. Ashcraft also reported that he had received letters this week from the Regional Water Quality Control Board that give hope of being able to run the Tennant well through a perchlorate removal system.

Mayor Kennedy opened the public hearing.

No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** the Resolution Implementing the Water Supply Shortage Operation Plan to Protect Public Health and Safety When Water Shortages Occur. Resolution No. 5838*

Redevelopment Agency Action

OTHER BUSINESS:

32. LIBRARY PROJECT CONSTRUCTION BUDGET.

Recreation and Community Services Division Manager Spier presented the staff report as provided in the agenda packet.

Mayor Kennedy stated he needed clarification on the allocation of the excess funds; specifically the costs for the additional parking needed at the aquatics center?

Ms. Spier stated that \$100,000 will be needed to construct the additional slide, leaving a need for approximately \$200,000 to provide an additional 40 parking spaces.

City Manager Tewes added that they are looking to place the parking spaces on the site just to the south of the existing improvements.

Mayor Kennedy asked if there is any way to provide this parking area on the Condit Road side, adjacent to where the future sports complex will be located, so that both facilities could share the parking area.

City Manager Tewes stated that this should be reviewed under the master plan that the Parks and Recreation Commission is pursuing.

Council Member Carr asked about the proceeds from the Abbott Lab loan that will be returning to the city and used for this project.

City Manager Tewes reported that when the subcommittee considered the funding strategy, they were told that there were certain loans due and payable in the near term during the time when this project would be developed. Those monies would be returned to the 80% fund of the Redevelopment Agency, and would be available for any allocation. There is also program income that comes in from time to time that had not been previously allocated, and the subcommittee is recommending that these funds be allocated to the library project.

Council Member Tate asked for clarification on the recommendation for approval of the schematic design.

Ms. Spier stated that the Council is being asked to approve just the basic footprint of a 28,000 square foot designed building, and then the Library Commission will be asked to come up with programming element details.

Chairman Kennedy opened the public comment.

Mr. Chuck Dillmann stated that the allocation of this excess money should be maintained in the library budget because the 28,000 square foot building is going to be too small. He stated that the quality of the cost estimate, based on a design that was done in a hurry, may turn out to be impossible to build for \$17 million. In addition, because of the uncertainty that has been experienced by the city in building its other facilities, he recommended that the full amount available be allocated to the library with a target budget of \$17 million, but holding a reserve to be used with appropriate justification.

No further comments being offered, the public comment was closed.

City Manager Tewes responded to Mr. Dillmann's comments. He stated that the 28,000 square foot size had been selected based on the standard of ½ square foot per capita, and this size represents the size of the library that will be required for the urban growth boundary build-out population. It is also 5,000 square feet bigger than the existing Community Center, so it is a very large facility. The budget allocation of \$17 million recommended this evening is \$400,000 larger than the estimate in order to allow a cushion for financing costs and delays. He stated he wanted to make it absolutely clear that the recommendation is that the guiding principal should be that the city will design and build the Library which the city can afford; and that what is built should cost no more than \$17 million. That means the

size of the building will be controlled by the budget, instead of the budget being controlled by the size of the building. This is a change in the approach to capital projects for the city.

Council Member Tate stated that he totally disagrees with that. The Council has taken \$400,000 away from this project and put it into the Indoor Recreation Center project, and staff is now suggesting that one of the possible uses of the excess funds is to put that toward the Indoor Recreation Center too. Yet, the Library is penalized to the point that we have to build to the budget. He stated that he just cannot agree with that. If we get down the road and find that our programming demands that we provide a few more square feet, we will be totally handcuffing ourselves if we say we are bound by the budget. He totally does not agree with that at all because we need some flexibility. He is totally behind going with a more rigorous process of construction control, but he does not believe that we should make a commitment like that up front and totally handcuff ourselves.

Mayor Kennedy asked that the Council consider each recommendation individually.

Action: *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Established** an Alternative Capital Improvement Project For a 28,000 Square Foot Library at the Civic Center Site with Potential Future Expansion of 10,000 Square Foot and a Budget of \$17 Million.*

Action: *On a motion by Agency Member Tate and seconded by Agency Member Chang, the Agency Board unanimously (5-0) **Approved** the Source of Funding to Finance the Project Construction Budget as Outlined in Exhibit A.*

Action: *On a motion by Agency Member Tate and seconded by Agency Member Chang, the Agency Board unanimously (5-0) **Directed** the Library Commission to Review and Develop a Program for a 28,000 Square Foot Building.*

Action: *On a motion by Agency Member Tate and seconded by Agency Member Chang, the Agency Board unanimously (5-0) **Approved** Seeking of Cooperation from the County in Imposing a Similar Development Impact Fee in the Unincorporated Area and **Directed** that a letter be sent to County Supervisor Don Gage to that effect.*

Action: *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Revised** the CIP to Illustrate the Revised Funding Allocations for the Storm Drainage Projects.*

Action: *On a motion by Agency Member Tate and seconded by Agency Member Sellers, the Agency Board unanimously (5-0) **Directed** the City Manager Analyze the Alternative Project Management Model and Prepare Recommendations for Council Consideration on Obtaining the Services of a Qualified Construction Management Firm and Architect and Report Back to Council in October 2004 when it is Anticipated the City Will Know the Results of the State Funding for the Larger Library Project.*

Council Member Chang stated she had a question on Recommendation #7, and asked if contingencies have been built into this budget.

City Manager Tewes stated that there are contingencies built in as well as the additional \$400,000 that was added for good measure.

Council Member Sellers stated that he supports Recommendation #7, and if we have additional resources they need to be identified, but we do need to have the budget be the controlling factor in this project. The Council spent a lot of time cutting back on the Indoor Recreation Center project, and yet they still needed to find an additional \$400,000 because they had to protect the production of income on the IRC project. The Library Project is a different dynamic because it is not dependent on generating income, and he feels that 28,000 square feet is a significant sized facility. If, in order to get it built within the budget, it needs to be reduced to 27,900 or 27,800 he is willing to live with that. If they had not already put in all the contingencies and the additional \$400,000 on top of that, then he would feel differently. He asked if there would be action this evening to designate the \$1.2 million.

Mayor Kennedy responded that he would make a recommendation that this decision not be made this evening, and Council Member Sellers agreed and stated that he just wanted to make sure that it was not being made this evening.

Council Member Carr commented that the city does not have “extra” money, and does not have \$1.2 million just laying around that the council needs to decide how to use. The \$18.2 million budget was created by finding areas where the Council could take money away from projects to put together for this budget. He believes the intent of the subcommittee in coming up with more money than they thought the project was going to cost was to cover the many mitigations that would have had to be taken dealt with if the site had ended up being in the downtown area. He agrees that the Council should not make the decision about those dollars tonight; but, when the decisions are made, they should not look for new things to spend these monies on, but return these monies to where they were taken from. The reason he is supporting making the budget be the controlling factor on this project, is because that is where The Council ultimately always try to be on a project. If there ends up being a need for more money, they try to figure out where that money comes from, and he feels that the library project should have to do that too. If this budget ends up needing another \$300,000 or \$400,000, the Council should consider it again and find out where those dollars will come from. We will have a budget, and then design to that budget; but if they find that the design just won’t work, the Council will have to decide where more money will come from.

Mayor Kennedy stated that the original library budget was about \$14 million; and now this budget is \$17 million, which is a substantial increase. In addition, he believes the City has become smarter in how they manage projects. He believes the contractor will be locked into a specific price, so there is better assurance that we will hit the budget we have set, and will allow projects to be built within budget. He stated he is in support of this motion, and feels that we need to move forward. The further discussion on the \$1.28 million should be delayed until there is additional information on the costs of the various alternatives, such as the cost of the downtown promenade or the cost of the aquatics center parking lot. There are a series of projects to be considered before that decision is made.

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Carr, the Agency Board unanimously (4-1, with Tate voting No) **Directed** Staff that any Project Model Moved Forward will have the Budget be the Controlling Factor.*

City Manager Tewes reminded the Council, that in regard to recommendation #6 and the project management model, the Council had adopted a recommendation that staff develop an analysis and return it for Council review in October.

City Council Action

OTHER BUSINESS:

**33. APPROVAL OF THE MITIGATION MONITORING AND REPORTING PLAN FOR THE INSTITUTE GOLF COURSE (Continued from 7/21/04).
Resolution No. 5839**

Planning Manager Rowe presented the staff report as provided in the agenda packet.

Council Member Carr asked who has the final authority on how the MMRP issues are to be carried out on the site.

City Attorney Leichter stated that in any Mitigation Monitoring Plan, whether it is overseen by the city or an outside consultant, the city has the ultimate responsibility for interpretation. If the city does not believe the applicant is complying with the MMRP, they would be given notice of that fact, and if they disagree they would have the right to appeal that to the Council. The Council's determination would be binding unless appealed to a court.

Mr. Rowe reported that the issue of the loss of the agricultural land was identified in the EIR as an impact that could not be mitigated, which is why it does not appear in the MMRP. The non-renewal of the Williamson Act contract was a condition of approval, and an action the Council took on July 7.

City Attorney Leichter stated that the proceeding for cancellation of the Williamson Act contract will be immediately initiated by the city.

Council Member Sellers asked, in regard to item #29, whether the restaurant mentioned is referring to the big one or the small one.

Mr. Rowe responded that it is referring to the larger restaurant. At the time this document was being prepared, it was under renovation; but they have since decided not to proceed with that.

Mayor Kennedy opened the public comment.

Mr. Steve Sorenson, speaking on behalf of the applicant, stated he had two requests for the council. He asked for applicant involvement in selection of the consultant that will be monitoring the applicant's progress in meeting the conditions of the MMRP. Secondly, he requested that the Council not penalize

the applicant if the applicant is delayed in meeting the conditions of the MMRP due to delays that occur due to other government agencies that might be involved in the process. He requested that, if the City Council does receive notice that the applicant has not completed an element of the MMRP, that they not assume the applicant has failed to operate in a forthright manner, but that the Council investigate to make sure that the non-compliance is not caused by a delay of some government agency that might be involved. The applicant intends to fulfill all of the obligations required on time; and if they are not done on time, the delay is likely going to be caused by the review of an outside agency rather than the applicant.

Mr. Randy Long, speaking for the applicant, stated he had no further comments, but was available for questions from the Council.

The Council did not have any questions for Mr. Long, and he returned to his seat.

No further comments being offered, the public comment was closed.

City Attorney Leichter responded to Mr. Sorenson's requests. She stated that the city will be selecting a consultant to oversee the MMRP because the city cannot take that task on due to work load and legal issues. While the city would be happy to receive the applicant's suggestions, she cannot advise the council that it would be prudent to allow them to have a significant say in the selection of the consultant, because the ultimate responsibility for implementation of this plan rests with the city and not the applicant. It is critical to make sure the consultant selected is acceptable to the city. The applicant will have the opportunity to educate the consultant about the unique aspects of this project; but she cannot recommend that this be attached as a condition to the MMRP. Likewise, the city would be willing to consider that other agencies might be the cause of any delay, but she cannot recommend that the MMRP be amended to incorporate that presumption.

In response to Council Member Sellers question on the matter of delays caused by other agencies and the penalties involved, City Attorney Leichter stated that there are deadlines that the applicant has accepted. In the past, when the applicant has claimed that another agency was the cause for their not meeting a deadline, the city has always followed up to investigate the cause of the delay. Staff would take such information into consideration when reporting back to the council regarding delays and whether the applicant should be penalized.

Mayor Kennedy noted that it appears the applicant is asking for clear communication between the city and the themselves, and he asked if there is going to be one central point for monitoring to keep communications open and clear between the applicant and the city.

City Manager Tewes responded that one of the requirements of the MMRP is that the applicant will provide the resources the city requires in order to hire staff to provide that ongoing monitoring. The city does not feel it is the responsibility of the taxpayer to monitor this EIR mitigation plan. The conditions of approval make it clear that the applicant will provide the resources, and the city will hire someone to do that monitoring. It is the intention of the city to cooperate in the selection of the consultant; but, the fact is, that when a contract is required to be performed by the city, it is the city that is responsible. The consultants are accountable to the city, not the applicant. He stated that, as he understood Mr.

Sorenson's request, the applicant is requesting that the city communicate with them, and that will be done.

Council Member Carr noted that the MMRP contains requirements for reporting reviews which will provide an opportunity for the applicant to explain any areas where there may be a delay. He stated that staff should make sure that those regular reviews do occur, whether they are before the Planning Commission or the Council, so that public reviews are done on a regular basis.

Action: *On a motion by Council Member Chang and seconded by Council Member Carr, the City Council unanimously (5-0) Adopted the Resolution. **Resolution No. 5839.***

34. ADOPT ORDINANCE NO. 1687, NEW SERIES (Continued from 7/21/04).

Planning Manager Rowe presented the staff report as provided in the agenda packet.

Mayor Kennedy opened the public comment.

No comments being offered, the public comment was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council Waived the Reading in full of Ordinance No. 1687.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) Adopted Ordinance No. 1687, New Series and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT ON A 192±-ACRE SITE CHANGING THE ZONING DESIGNATION FROM OPEN SPACE (OS) TO PLANNED UNIT DEVELOPMENT (PUD) LOCATED AT 14830 FOOTHILL AVENUE BETWEEN MAPLE AVENUE AND ROBIN AVENUE. (APNS 825-29-002, 043, 044, 045 AND 825-30-007).***

35. ORDINANCE AMENDING THE MUNICIPAL CODE TO PROHIBIT THE POSSESSION OF IMITATION FIREARMS ON PUBLIC PROPERTY.
Ordinance No. 1693

Interim Police Chief Cummins presented the staff report as provided in the agenda packet, and displayed examples and photographs of replica guns. He also stated that the State Assembly passed a bill this afternoon restricting these guns in public, but the legislation still has to pass the Senate and be signed by the Governor.

Council Member Carr commended the Police Department for their professionalism that prevented what could have been a tragedy during the crisis last spring at Jackson Oaks School here in Morgan Hill. He stated that he believes this is a very important action for the Council to take and asked Chief Cummins how this new law would be publicized so that children and parents will become aware of it.

Chief Cummins stated that information will be placed on the city's website and taught in schools by the School Resource Officers so that the word will get out to the high school and middle school students.

Council Member Carr stated that he would make sure the members of the City/School Liaison Committee were apprised of this information at their meeting on Friday morning.

Council Member Chang asked why the Council would want to pass a law restricting someone from carrying a fake gun in public, but yet we have no such laws for real guns.

Chief Cummins stated that real guns are covered in the penal codes. He also stated that most people have an inherent sense of the danger of brandishing a real weapon in public, whereas a toy gun would not raise that natural caution; and therefore, could open the way for a dangerous and tragic situation such as occurred at the Jackson School.

City Attorney Leichter stated that this ordinance also addresses the appropriate response from the police. If the officers have to question whether the gun being brandished is real or fake, it could slow their reaction time causing them to be placed in danger; or it could cause them to think a fake weapon was real causing danger to a citizen. When a gun is being brandished in public, the police will be called, and it is imprudent to place the officers in the position of trying to decide whether the gun is real or fake. It is more prudent to prohibit fake guns in public.

Chief Cummins followed up on the City Attorney's remarks by noting that this problem only exists when these guns are in the public arena, not in someone's back yard. When they are in the public arena, they frighten the public and create a potential danger to the bearer and police officers.

Mayor Kennedy opened the public comment.

No comments being offered, the public comment was closed.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of the Ordinance.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council **Introduced** the Ordinance, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 9.04.010(A) (Discharge-Permit Required-Fee) OF CHAPTER 9.04 (WEAPONS) AND ENACTING CHAPTER 9.06 (IMITATION WEAPONS) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING PROHIBITION OF IMITATION WEAPONS** by the following roll call vote: *AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*
Ordinance No. 1693, N.S.*

36. COMMENTS FOR THE HIGH-SPEED BULLET TRAIN.

Planning Manager Rowe presented the staff report as provided in the agenda packet.

Mayor Kennedy opened the public comment.

No comments being offered, the public comment was closed.

In response to Mayor Kennedy's request for information on the Planning Commission's comments, he stated that the Commission Members had decided to submit their comments back to the staff individually, but that the Commissioners concurred with the comments that are included in the staff report this evening.

Council Member Tate stated that the city should make a strong recommendation to keep this high speed train project away from Henry Coe State Park.

Council Member Carr agreed that we need to absolutely make a strong statement about staying away from Henry Coe Park.

Mayor Kennedy suggested taking a position favoring the southern route, with a stop in Morgan Hill.

Council Member Tate stated that he was concerned about the growth inducing impact this would have on Morgan Hill.

Council Member Carr stated that the station in Morgan Hill was removed from the recommendations the last time the Council commented on this project because of the concern about the growth inducing impacts. It was decided that the impact of having a high speed train going through Morgan Hill every day would be too great, and that the northern route was the only acceptable route.

Mayor Kennedy stated that he favors a southern route through Pacheco Pass, and believes that it can be built without major adverse impacts on the city if done properly; and that it does not necessarily have to have a stop in Morgan Hill.

Council Member Sellers concurred with the Mayor on the choice of a southern route. Since it appears that the only consensus apparent tonight is that this train should not go through Henry Coe Park, perhaps that should be the recommendation that the Council should focus upon for now.

Council Member Carr stated that he is not sure we need to identify a particular route that the council prefers, but that we should give them all the potential impacts to Morgan Hill that are indicated in the staff report and very strongly voice our opposition to going through Henry Coe Park.

Council Member Chang stated that she had previously passed on to the Cities Association the Legislative Committee's recommendation of choosing the southern route without going through the Henry Coe Park, and the Cities Association had eventually taken that position.

Mayor Kennedy agreed that had occurred and he stated that Council Member Sellers statement seems to be a good starting point. A statement should be formulated that we oppose any bullet train right of way through Henry Coe Park; and that we support a southern Pacheco Pass route, as Council Member Chang pointed out we have supported in the past.

Council Member Carr noted that the previous recommendation to the Cities Association was made prior to having the draft EIR, and that the Council did not have as much information as is now available.

Action: *On a motion by Council Member Sellers and seconded by Council Member Chang, the City Council unanimously (5-0) **Directed** staff to submit the comments outlined in the staff report and add an expression of the council's strong opposition to the route of the Proposed High-Speed Bullet Train going through Henry Coe Park.*

37. APPOINTMENT TO THE CITY'S 2006 CENTENNIAL PLANNING STEERING COMMITTEE.

Mayor Kennedy noted that this process was begun at the last meeting, but some council members required some additional time to consider and make their appointments.

Council Member Sellers stated that he is thrilled to announce that Vivian Varela has agreed to be his appointee to the Centennial Planning Steering Committee, and he thanked her publicly for her willingness to serve.

Council Member Carr confirmed his appointment of Ellie Weston.

Council Member Chang confirmed her appointment of Lorraine Welk.

Council Member Tate confirmed his appointment of Janie Knopf.

Mayor Kennedy listed the full committee as Brad Jones Marilyn Librers, Jennifer Tate, Lorraine Welk, Janie Knopf, Ellie Weston, and Vivian Varela.

Mayor Kennedy stated that there is a need to appoint a two-member council subcommittee to assist this subcommittee, and he stated he would like to serve on that council subcommittee.

Council Member Carr noted that, since after November 1 there will only be two members of this current council that are guaranteed to be on the Council to serve on such a subcommittee, perhaps the Council would to delay setting up the subcommittee at this time. The other concern he raised was that when the council appointed a council liaison to the subcommittee in charge of planning the opening of the Community Center, it often happened that more than the liaison would end up attending, which required staff to post agendas for special council meetings. This was frustrating because not all council were able to attend, and it then became a matter of public record that some council were not attending meetings, which did not reflect well on their record. He stated that he takes his commitment of attending all agendized meetings very seriously, and he wants to make sure that we don't create that situation again with the Centennial planning. It was his understanding that the council was making these appointments

in order to place this issue in the hands of citizens, so as not to put more burden on staff, but the moment we put any council members on the committee such burdens are added. He also questioned whether during this first phase council members are even necessary. The Centennial Steering Committee members are charged to report back to the Council, and at that time all five members can join the dialogue and provide input to the process.

Mayor Kennedy stated that he is open to deleting the second recommendation of appointing a two-member Council subcommittee until after the November election, at which time he would like staff to bring that back before the council.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Confirmed** the Appointments of Brad Jones, Marilyn Librers, Jennifer Tate, Lorraine Welk, Janie Knopf, Ellie Weston, and Vivian Varela to the City's 2006 Centennial Planning Steering Committee.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Directed** the City Manager to Appoint a City Staff Member to Work with the 2006 Centennial Planning Steering Committee, if Deemed Appropriate.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

1. After the November election staff is to return the item for appointment of a two-member Council subcommittee to assist the Centennial Planning Steering Committee for council consideration.

No other items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:50 p.m.

MINUTES RECORDED AND PREPARED BY:

MOIRA MALONE, DEPUTY CITY CLERK/DEPUTY AGENCY SECRETARY

**CITY OF MORGAN HILL
JOINT REGULAR REDEVELOPMENT
AND SPECIAL CITY COUNCIL MEETING
MINUTES – AUGUST 25, 2004**

CALL TO ORDER

Chairman/Mayor Kennedy called the special meeting to order at 7:01 p.m.

ROLL CALL ATTENDANCE

Present: Agency/Council Members Sellers, Tate and Chairperson/Mayor Kennedy
Late: Agency/Council Member Carr (arrived at 7:10 p.m.)
Absent: Agency/Council Member Chang

DECLARATION OF POSTING OF AGENDA

Agency Secretary/City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Chairman/Mayor Kennedy, Mary Ellen Salzano led the Pledge of Allegiance.

CITY COUNCIL SUBCOMMITTEE REPORT

OTHER REPORTS

City Treasurer Michael Roorda presented a quarterly update on the state of the City's finances, one that reviews the full Fiscal Year 2003-04, ending June 30, 2004. He said that the City ended in a fairly successful year, revenue-wise, all things being considered. One primary factor that contributed to the reason the City is off budget is the reduction in State vehicle in lieu fees. He said that expenses were consistent with what was budgeted with some increases in expenditures. He indicated that more money was expended than was taken in revenues, but that this was expected and projected. The City can be reassured that it has a substantial general fund reserve, even though they have been tapped into the past few years. He said that the City has met and identified a budget strategy to address the shortfall in revenues and expenditures, moving forward, in order to bring the budget into balance over a period of time. He addressed the general fund revenue, indicating that the diversity in revenue sources continues to serve the City well during these difficult times. He noted that there continues to be a drop in sales tax based on projections and prior years' results, down \$½ million or more. However, the City has done better in the property taxes than expected. He stated that property taxes are becoming a more significant component of the City's overall revenue and is helping to offset the drop in sales tax seen over the last couple of years. It is hoped that in the coming year, the City will see a leveling off or increase in sales

taxes. Seeing an increase in sales taxes and property taxes will give the City some relief. He stated the State is expected to return \$600,000 in vehicle in lieu fees to the City within the next few years. All in all, given the difficulty of the past year, the City's finances have ended with good results.

Mr. Roorda addressed the City's overall expenses, noting that public safety (police & fire), recreation, and public works utilize general fund allocations. The City saw some under spending compared to budget in the police department where fire services is contracted out to the County and that there is no change in that budget. There has been a slight increase in administration expenses due to some of the projects that have come on line such as the aquatics center. He noted that expenditures in public works have come down slightly below budget. He said that it is his understanding that there is still some work to be done with the numbers.

Mr. Roorda indicated that Fiscal Year 2004-05 will see an increase in the draw down of the general fund reserve, still leaving a substantial reserve. It was understood that this would be one of the more difficult years in terms of the City's use of general fund reserves. He said that the City is seeing increases in both revenues and expenses. He said that there are increases associated with the aquatics center. It is the Finance & Audit Committee's hope to see stabilization; some increase in sales tax dollars and property taxes, and that the City will receive backfill of vehicle in lieu fees. He informed the Council and the public that the City will see increases in both police and fire contracts, the increase attributed to the cost of pensions that are commencing this fiscal year and will be an ongoing expense.

PUBLIC COMMENT

Chairman/Mayor Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

John Kennett indicated that he presented the Council with a copy of the comments he was going to make this evening. However, the City Manager has indicated, prior to the start of the meeting, that public works staff responded to his concerns today and that a meeting is scheduled for Friday morning to discuss the relocation of the new street light on Cochrane Road. He said that the issue for him is that council and staff members change. He stated that it is important for individuals who reside on the north side of Cochrane Road to receive something in writing that states definitively that absence of significant changes in circumstances, that the construction of the road will not impact the north side trees and landscaping. He noted that on March 3, 2004, the Council indicated that a compromise was workable because public works staff had measured the area and felt that the improvements could be installed without impacting the neighbors on the north side of the road. He wants to make sure that this is part of the record so that the trees are protected.

Mary Ellen Salzano informed the Council that on September 11 at 10 a.m., there will be a celebration and observation of Patriots Day held at the Community and Cultural Center Amphitheater. She indicated that the American Legion will be presenting blue star banners to Morgan Hill residents/employees who have a family member serving in the military.

Council Member Carr entered and was seated.

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board, on a 4-0 vote with Agency Member Chang absent, **Approved** Consent Calendar Items 1-3, as follows:*

1. **JUNE 2004 FINAL FINANCE & INVESTMENT REPORT- REDEVELOPMENT AGENCY.**
 Action: **Accepted** and **Filed** Report.
2. **JULY 2004 MONTHLY RDA FINANCE & INVESTMENT REPORT.**
 Action: **Accepted** and **Filed** Report.
3. **REVISED BUSINESS ASSISTANCE GUIDELINES.**
 Action: **Adopted** the Revised Business Assistance Guidelines.

City Council Action

CONSENT CALENDAR:

City Manager Tewes indicated that he would like to make a comment regarding item 4 and Mayor Pro Tempore Sellers requested that item 7 be removed from the consent calendar for a brief comment.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Chang absent, **Approved** Consent Calendar Items 5, 6, 8, and 9 as follows:*

5. **JULY 2004 MONTHLY FINANCE & INVESTMENT REPORT.**
 Action: **Accepted** and **Filed** Report.
6. **PERFORMANCE MEASURE UPDATE – FOURTH QUARTER FISCAL YEAR 2003-2004.**
 Action: **Received** and **Filed** Report.
8. **APPOINTMENTS TO THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY (VTA) VALLEY TRANSPORTATION PLAN DESIGN ENHANCEMENTS (VTP DE) COMMITTEE.**
 Action: 1) **Approved** the Request to Appoint 1 Member of the Planning Commission and 2 Members of the Architectural Review Board to Serve on the Newly Established VTA Valley Transportation Plan Design Enhancements (VTP DE) Committee; and 2. **Directed** Staff to

Agendize on the Next Planning Commission and Architectural Review Board Agendas the Request that They Submit to the City Council the Names of Their Members Interested in Serving on the VTP DE Committee.

9. MEDICAL SERVICES POLICY AND OBJECTIVE.

Action: Adopted the Medical Services Policy and Objectives.

4. JUNE 2004 FINAL FINANCE & INVESTMENT REPORT- CITY OF MORGAN HILL.

City Manager Tewes said that the June 2004 financial report is the year-end for Fiscal Year 2003-04. He informed the Council that staff has presented it with a document this evening that will be shared and discussed with the Council's Finance & Audit Committee. The document is an update to the five-year forecast that can be made based on the actual results of the last fiscal year and based on the actions taken by the Governor and the legislature in adopting the budget, assuming the adoption of proposition 1A. He noted that the Council has adopted a multi-year strategy to address coming into balance with the City's budget. He indicated that the City's general fund reserves allow the City to bring the budget into balance over a period of time without having to adversely impact services to the community in a significant way. He stated that the five year strategy adopted by the Council is reflected in the numbers requires that there be a goal, and that certain actions be taken. He said that the goal states that by June 30, 2008, the City will achieve a balance in the general fund such that revenues will equal expenditures in that fiscal year, doing so without reducing the City's reserves below 25% of revenues. In order to achieve this, the City needs to take certain steps to reduce expenditures in the general fund by \$800,000 in the current fiscal year. He noted that this has been achieved with the adoption of the budget. In next fiscal year, the City will need to come up with another \$400,000 of permanent reductions and spending in the general fund. This will be accomplished in the recommended budget to the Council. He noted that this will also require new revenues and that the Council has committed to identify \$800,000 in new revenue next fiscal year and \$400,000 in the following fiscal year. The forecast suggests that by June of that year, the City will still be out of balance by \$½ million. However, the City will still have a substantial 35% reserve, even though the City will still be out of balance in that year. He stated that there are still some adjustments that need to be undertaken with the five-year forecast and in the Council's strategy. However, one of the aspects of the Council's strategy was that it be periodically updated to reflect actual results based on the most current information.

Mayor Kennedy stated that the City has made significant cuts in expenditures by \$800,000. He said that the cut backs in the watering, landscaping and turf on some of the City's park are evident to the public. He indicated that the City has received complaints about this issue. However, the City has had to make these cutbacks based on the limitations of the budget and that the Council has to make structural changes to reduce operating costs to meet the goal to bring the budget and the City's expenses and revenues into balance.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, Accepted and Filed Report.*

7. REQUEST FOR CITY CO-SPONSORSHIP OF OPERATION: CARE AND COMFORT MILITARY CARE PACKAGE PROGRAM.

Mayor Pro Tempore Sellers stated that he supports the effort to co-sponsor the “Operation: Care and Comfort Military Care Package Program.” However, he felt that it was important to point out to the public that this is a very unusual set of circumstances that the nation is in a war time situation. Therefore, the City will be dealing with the situation by providing this opportunity. He said that it is very rare that the City provides public facility for such purposes. He appreciated that this program was brought to the Council’s attention because he felt that under this particular specific circumstance it is an action that is warranted and appropriate.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Chang absent, **Agreed** to Co-Sponsor “Operation: Care and Comfort Military Care Package Program.”*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

Redevelopment Agency and City Council Action

CLOSED SESSIONS:

Agency Counsel/City Attorney Leichter announced the below listed closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	5

OPPORTUNITY FOR PUBLIC COMMENT

Chairman/Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Chairman/Mayor adjourned the meeting to Closed Session at 7:25 p.m.

RECONVENE

Chairman/Mayor reconvened the meeting at 9:45 p.m.

CLOSED SESSION ANNOUNCEMENT

Chairman/Mayor Kennedy reported that the City Council decided to reject Mr. Bruce Tichinin's request to disqualify City Attorney Helene Leichter, City Manager Ed Tewes, Attorney "Burnes," and the law firm of Jorgenson, Siegel, McClure and Flegel.

ADJOURNMENT

There being no further business, Chairman/Mayor Kennedy adjourned the meeting at 9:47 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, AGENCY SECRETARY/CITY CLERK



REDEVELOPMENT AGENCY

MEETING DATE: *September 1, 2004*

MORGAN HILL DOWNTOWN ASSOCIATION (MHDA)

REQUEST FOR PBID FUNDING

RECOMMENDED ACTION(S):

Authorize the Executive Director to negotiate and execute a loan agreement, subject to Agency General Counsel approval, with the Morgan Hill Downtown Association (MHDA) in an amount not to exceed \$40,000 for consulting services needed to assist with the formation of a Property Based Improvement District (PBID).

EXECUTIVE SUMMARY:

In July 2004, the Redevelopment Agency approved an agreement for \$97,500 with the MHDA for FY04-05 to provide "Main St." program services to the downtown. As a condition of the funding, MHDA is required to develop a 4-year strategy for becoming more financially self-sufficient, including the possible formation of an assessment district. MHDA is also to present this 4-year plan to the Agency in the first quarter of FY 04-05.

Attached is the MHDA's preliminary plan for forming a PBID which would help the MHDA to become more financially self-sufficient. The formation of a PBID is "in essence" the 4 yr plan and is a common method by which downtown associations seek to fund their operations. Part of the PBID process will include a management plan and budget for operations. The process will take about 12 months to form if successful. Recently, the MHDA sponsored a workshop to provide interested businesses and property owners downtown an orientation on Property Based Improvements Districts (PBID). The result was that the MHDA has decided that they should pursue the PBID concept further.

The PBID formation process is very labor intensive as the MHDA will be meeting with businesses, property owners, and public agencies which own property in the downtown area to discuss the benefits of such assessments. Public agencies such as the City and County are subject to PBID assessments, but they are allowed to negotiate the specific amount of the assessment. As MHDA consists of volunteers and one paid staff member, they will need technical support for such activities as creating databases and establishing a budget and fair assessment methodology. MHDA estimates this support will cost about \$40,000 based on proposals they received from various consulting firms who specialize in the formation of PBID's. It should be noted that the consulting firms do not generate support for the PBID, but rather provide the tools to MHDA to build consensus for the PBID.

We are recommending that the \$40,000 be allocated to the MHDA as a loan to be repaid by PBID, if successfully formed. Staff is requesting authority to negotiate the specific scope of work and the repayment terms with the MHDA for the PBID. Our guiding parameter will be to try to minimize the impacts of the loan repayment on the PBID's first year of operation. If the effort to form a PBID or other assessment structure is not successful, the loan would not need to be repaid by the MHDA.

FISCAL IMPACT:

Sufficient funds exist in the FY 04-05 Business Assistance Programs (317) budget for the requested \$40,000.

Agenda Item # 19

Approved By:

BAHS Director

Submitted By:

Executive Director



CITY COUNCIL STAFF REPORT

MEETING DATE: September 1, 2004

ZA-04-07: DIGITAL – VENTURE PROFESSIONAL CENTER

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

EXECUTIVE SUMMARY: The applicant is requesting approval to modify the list of permitted uses for an approximate 9.4-acre area in the Morgan Hill Ranch Business Park to allow for medical/dental and general office uses. Approximately half of the site is currently developed with light industrial buildings. The remaining portion of the site is proposed for development of a 39,140-sf medical/dental office building and a 21,878-sf office building.

The Council reviewed the applicant's request at the August 18 meeting, and unanimously approved the project mitigated Negative Declaration. The ordinance, however, was continued to September 1. The DePaul Society expressed concern regarding the inclusion of an MRI (magnetic resonance imaging) facility as a permitted use in the Venture Professional Center. As a result, the Council directed Staff to eliminate the MRI as a permitted use and to include language regarding future Council consideration of the MRI. The Council also requested the DePaul Society to provide an update at the December 1, 2004 Council meeting regarding their progress in establishing an MRI facility at the DePaul Center. If sufficient progress has not been made by December 1, the Council stated that they would reconsider allowing an MRI facility at the Venture Professional Center. A revised ordinance with the Council's requested changes is attached for the Council's review and approval.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing these applications.

Agenda Item # 20

Prepared By:

Associate Planner

Approved By:

Planning Manager

Submitted By:

City Manager

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1474, N.S., AMENDING THE LIST OF PERMITTED USES FOR DIGITAL ISLAND OF THE MORGAN HILL RANCH BUSINESS PARK TO ALLOW GENERAL OFFICE USES AND UP TO 40,000 SF OF MEDICAL/DENTAL OFFICE USES (APNs 726-25-080 thru - 082) (ZA-04-07: DIGITAL – VENTURE PROFESSIONAL CENTER)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.
- SECTION 4.** The City Council finds that the proposed amendments to the Planned Unit Development District are consistent with the criteria specified in Chapter 18.30 of the Morgan Hill Municipal Code.
- SECTION 5.** The City Council hereby approves a precise development plan as contained in that certain series of documents date stamped July 9, 2004, on file in the Community Development Department, entitled “Venture Professional Center” prepared by Ware Malcomb. These documents, as amended by site and architectural review, show the location and sizes of all lots in this development and the location of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.
- SECTION 6.** The Council hereby approves an amendment to the list of allowable uses within Lots 1, 2 and 3 of Digital Island, as shown on the attached zoning plat (Exhibit A), to include those uses identified in the attached Exhibit B.
- SECTION 7.** The Council hereby tables the applicant’s request for an MRI (magnetic resonance imaging) facility in the Venture Professional Center for future reconsideration on or after December 1, 2004.

- SECTION 8.** On or prior to December 1, 2004, the Council will consider a substantive plan from the DePaul Health Center which demonstrates the Center's present ability and intent, both financially and administratively, to install an MRI facility at the Center. Said plan shall include definite time lines for such installation.
- SECTION 9.** Should the Council determine the Center's plan to be insufficient on or shortly after December 1, 2004, the City Council will reconsider the inclusion of an MRI facility in the Venture Professional Center.
- SECTION 10.** Approval of this zoning amendment request shall not become effective until such time that the applicant (Morgan Hill Development Partners) cures all defaults of any subdivision improvement agreement; development agreement, including but not limited to payment of assessments, penalties and interest; and/or any other agreements between the applicant and the City of Morgan Hill.
- SECTION 11.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- SECTION 12.** Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 1st Day of September 2004, and was finally adopted at a regular meeting of said Council on the 15th Day of September 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ **CERTIFICATE OF THE CITY CLERK** ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 15th Day of September 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk

EXHIBIT B

ALLOWED USES FOR DIGITAL ISLAND VENTURE PROFESSIONAL CENTER

PERMITTED USES

Lots 1, 2 and 3:

1. All uses permitted in the ML, Light Industrial Zoning District as in effect on January 30, 1980, or as amended to consider other allowable uses; Private Recreation uses for Park employees.
2. 'Medical, dental, research, experimental, film or testing laboratories' shall include only those facilities where analysis testing is completed and no patient contact is involved.
3. All permitted uses allowed in the CO, Administrative Office District as in effect on July 28, 2004, with the following exceptions:
 - a. 'Educational services' shall be a conditional use (see below).
 - b. 'Health services, exclusive of hospitals' shall be prohibited except as specifically allowed by this ordinance.
 - c. 'Social services, except residential care' shall also exclude day care services.
4. All Group I and Group E Occupancies are strictly prohibited.

Building 1 on Lot 3 Only (up to a maximum of 40,000 sf):

1. Professional offices, which shall be defined as follows: An office from which and at which a doctor, lawyer, engineer, architect, accountant or similar professional persons may offer services.
2. A maximum of five patients undergoing minor medical procedures that require general anesthesia or that may render a patient incapable of unassisted self-preservation shall occupy the building at any given time.

CONDITIONAL USES - The following uses shall require review and approval by the Morgan Hill Planning Commission

Lots 1, 2 and 3:

1. All uses conditionally permitted in the ML, Light Industrial Zoning District as in effect on January 30, 1980, or as amended to consider other allowable uses.
2. Educational services



CITY COUNCIL STAFF REPORT

MEETING DATE: September 1, 2004

ANNEXATION APPLICATION, ANX-03-02: DEWITT-MARRAD

RECOMMENDED ACTION(S):

1. Open/close Public Hearing.
2. Adopt Resolution approving Annexation.

EXECUTIVE SUMMARY:

This application is a request to annex a parcel totaling 2.11 acres into the City of Morgan Hill. The project site is located 700 ft. south of the Dewitt Avenue and West Dunne Avenue intersection. The site is surrounded on three sides by the existing City Limits. Therefore, inclusion of the parcels into the City would represent a logical adjustment of the City's Boundary.

The project site is located within the City's Urban Service Boundary. Existing water and sewer lines are available within the site vicinity, and are of sufficient size to service future developments of the site. The project site is also within the established response time standard for fire service.

On October 14, 2003, the Planning Commission voted unanimously (6-0) to recommend approval of the annexation. A copy of the Planning Commission staff report and meeting minutes are attached as background information.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing this application.

Agenda Item # 21

Prepared By:

**Planning Intern
Approved By:**

Planning Manager

Submitted By:

City Manager

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL MAKING DETERMINATIONS AND APPROVING THE REORGANIZATION OF CERTAIN TERRITORY DESIGNATED “DEWITT AVENUE No. 2”, APPROXIMATELY 2.11 ACRES LOCATED 700 FT. SOUTH OF THE DEWITT AVENUE INTERSECTION WITH WEST DUNNE AVENUE, AND WITHDRAWAL OF SAID TERRITORY FROM THE SOUTH SANTA CLARA COUNTY FIRE PROTECTION DISTRICT. (APN 773-08-015)

WHEREAS, a written petition has been filed in the office of the City Clerk of the City of Morgan Hill in accordance the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, annexing into the City of Morgan Hill certain territory located in the County of Santa Clara, State of California, designated as “Cochrane Rd. Annexation No. 12” and as shown and described in attached Exhibits A & B, incorporated herein by reference; and

WHEREAS, said petition has been signed and consented to by Marrad Group, the owners of the land in the territory proposed to be annexed; and

WHEREAS, Government Code Section 56663(a) provides that if a petition for annexation is signed by all owners of land within the affected territory, the City Council may approve or deny the annexation without public hearing; and

WHEREAS, evidence was presented to the City Council;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, RESOLVES AS FOLLOWS:

SECTION 1: The City Council of the City of Morgan Hill is the conducting authority pursuant to Section 56757 of the Government Code for the annexation of property designated “Dewitt Avenue No. 2”, more particularly described in Exhibits “A” and “B”;

SECTION 2: Pursuant to Sections 56800 and 56828 of the California Government Code, the City Council of the City of Morgan Hill hereby annexes to the City of Morgan Hill the uninhabited territory particularly described in the attached Exhibit “A”, which is incorporated herein by reference, and hereby designated as “Dewitt Avenue No. 2”.

SECTION 3: The territory is hereby withdrawn from the South Santa Clara County Fire Protection District in accordance with Section 13952 of the California Health and Safety Code (APN 773-08-015).

SECTION 4: The following Findings are made by the City Council of the City of Morgan Hill:

- a. The said territory is uninhabited and comprised of approximately 2.11 acres.
- b. The said territory is within the City's Urban Service Area as adopted by the Local Agency Formation Commission of Santa Clara County.
- c. The annexation is consistent with the orderly annexation of territory within the City's Urban Service Area and is consistent with the City policy of annexing when all city services can be provided.
- d. An expanded environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A Mitigated Negative Declaration has been filed.
- e. The County Surveyor has determined the boundaries of the proposed annexation to be definite and certain, and in compliance with the Commission's road annexation policies.
- f. The said territory is within the City's Urban Growth Boundary.
- g. The proposed annexation does not create islands or areas in which it would be difficult to provide municipal services.
- h. The proposed annexation does not split lines of assessment or ownership.
- i. The proposed annexation is consistent with the General Plan.
- j. The said territory to be annexed is contiguous to existing City limits.
- k. The Planning Commission on October 14, 2003, enacted Resolution No. 03-75 recommending the alteration of the boundaries of the City of Morgan Hill by annexation of Dewitt Avenue No. 2 and withdrawal of said territory from the South Santa Clara County Fire Protection District.
- l. The Planning Commission on October 14, 2003, enacted Resolution No. 03-76 recommending a 4 lot subdivision consisting of 4 single family residential lots.
- m. The City has complied with all conditions for annexation imposed by the Planning Commission.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 1st Day of September, 2004 by the following vote.

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

🦉 CERTIFICATION 🦉

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council at a Regular Meeting held on September 1, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: *September 1, 2004*

WATER CONSERVATION PLANNING ACTIVITIES

RECOMMENDED ACTION(S): Provide Direction To Staff

EXECUTIVE SUMMARY: The past two years have been unusually challenging for the City's water system. After closing wells due to the discovery of low levels of perchlorate, the City has had difficulty finding suitable new locations for productive replacement wells. These circumstances have confirmed our knowledge that the City's water supplies are both precious and limited. There will come a time in the future when water supplies may limit the City's ability to develop properly. The sooner the City adopts a more comprehensive and active water conservation program, the longer the City's water supplies will be extended.

Staff has developed the attached draft two-year workplan consisting of six major activities. The purpose of this item is to solicit the Council's input on this draft plan and obtain the direction needed to proceed. In brief, the six major activities are:

- Water Conserving Rate Structure for Landscape Accounts
- Water Efficient Landscaping Ordinance For New Development
- Mandatory Submetering for New Multifamily Building Ordinance
- Demonstration Water Conservation Garden
- Retrofit at Resale Ordinance
- Economic Incentive Program

These programs are more fully described in the attached draft program workplan. It is important to note that this workplan only reflects the significant new initiatives planned by staff during this period and does not reflect the ongoing public education activities that staff continues to administer, the free distribution of water-saving devices, nor any of the assistance programs administered by the Santa Clara Valley Water District.

Staff recommends that the Council consider the draft workplan and provide direction to staff on proceeding with the workplan.

FISCAL IMPACT: No budget adjustment is requested at this time. The proposed concepts for ordinances do not have an anticipated significant fiscal impacts. Design concepts for the demonstration water conservation garden will be presented, along with cost estimates, to the Council later this year for consideration separately. The Economic Incentives Program will have significant fiscal impacts that will be presented to the Council for consideration once the concept is more fully developed.

Agenda Item # 22

Prepared By:

Program Administrator

Approved By:

Public Works Director

Submitted By:

City Manager

Draft 2004 - 2006 Water Conservation Workplan

Activity	Description	Starting Date	Ending Date
Water Conserving Rate Structure for Landscape Accounts	The City's water rate structure for landscape accounts does not currently escalate with water consumption. This activity proposes to develop a progressive rate structure that is both equitable and reasonable. The initial concept is to develop a "water budget" or allowance for each landscape, based on its size, that is directly reflected in the facility's rate schedule.	September, 2004	April, 2005
Water Efficient Landscaping Ordinance	There are unique water conservation activities associated with new development. While the City's design guidelines currently encourage water efficient landscapes, staff will research the models used in other communities that require water efficient landscapes.	September, 2004	April, 2005
Mandatory Submetering for New Multifamily Building Ordinance	Recent research indicates that multi-family residences that have a separate water meter use at least 15% less water than those that are commonly metered. While many new multi-family developments are already submetering, this ordinance would require this practice in all future multifamily developments.	September, 2004	April, 2005

Demonstration Water Conservation Garden	<p>While the City seeks to encourage both homeowners and developers to develop water-efficient landscapes, the City itself has not done an exemplary job of landscaping nor have we provided an example of what a water-efficient landscape should look like. This project will develop a demonstration garden on the Civic Center campus that will achieve the following three things: 1) Educate the public on how good a water-efficient landscape can look and the different approaches useful in developing a water-efficient landscape; 2) Lead by example to the community; and 3) Reduce general fund expenditures associated with water and maintenance of public grounds.</p>	September, 2004	To Be Determined
Retrofit at Resale Ordinance	<p>There is a large stock of existing residential, commercial, and industrial buildings in the community that have not benefited from the current State and Federal requirements mandating the use of water-conserving fixtures. While it could be considered unreasonable and unwieldy to require the retrofitting of all older buildings by a specific date, the sale of these older buildings presents an opportunity to require retrofitting at a time when: 1) The seller is already making some improvements or alterations to the property; 2) The seller anticipates receiving funds from the sale; and 3) There is an administrative process, the escrow, that can initiate the requirement.</p>	July, 2005	December, 2005
Economic Incentive Program	<p>While there can be a significant reduction in water demand associated with the relandscaping of a large parcel, owners may find that they do not wish to spend their limited capital funds in this way. The general concept of this program is to investigate the loaning of funds to property owners committed to relandscaping a parcel. The loan could be paid off by the savings experienced by the customer on future water bills.</p>	May, 2005	December, 2005



CITY COUNCIL STAFF REPORT

MEETING DATE: September 1, 2004

Agenda Item # 23

**Prepared and Approved
By:**

City Manager

REPORT OF THE LEGISLATIVE SUBCOMMITTEE

RECOMMENDED ACTION(S): Consider report and recommendations of the Council's Legislative Subcommittee which will be presented orally at the Council meeting.

EXECUTIVE SUMMARY:

The Legislative Subcommittee will meet prior to the Council meeting to review proposed legislation and intergovernmental policies. The Subcommittee will provide an oral report and recommendation for Council policy direction in the following subjects:

- Public finance;
- Land use and business regulations;
- Public health; and
- Wireless communications.

In addition, the Subcommittee will develop recommendations on policy resolutions to be considered by the League of California Cities' General Assembly.

FISCAL IMPACT: NONE



CITY COUNCIL/REDEVELOPMENT AGENCY STAFF REPORT

MEETING DATE: *September 1, 2004*

REVIEW CITY COUNCIL AND REDEVELOPMENT AGENCY'S NOVEMBER, DECEMBER AND JANUARY MEETING SCHEDULE

Agenda Item # 24

**Prepared/Approved
By:**

**Council Services &
Records Manager**

Submitted By:

City Manager

RECOMMENDED ACTION:

1. City Council and Redevelopment Agency **Discussion** and **Direction** Regarding the November, December and January meeting schedule

EXECUTIVE SUMMARY:

Annually, staff brings to the City Council/Agency Board the discussion of your November, December and January meeting schedule. The City Council and Redevelopment Agency are scheduled to meet as follows: November 3 & 17 (regular Council meetings); November 24 (regular Redevelopment Agency meeting); December 1 & 15 (regular City Council meetings); December 22 (regular Redevelopment Agency meeting); January 5 & 19, 2005 (regular Council meetings), and January 26, 2005 (regular Redevelopment Agency meeting).

Typically, the City Council/Redevelopment Agency holds two meetings during the months of November and December to accommodate the Thanksgiving and Christmas holidays; canceling the regular meetings of the Redevelopment Agency before the Thanksgiving and Christmas Holidays.

For the past few years, the City has furloughed non-emergency staff members. City Hall will be closed on December 23, 24, and 31, 2004 for the Holidays. It is being proposed that non-emergency staff members be furloughed December 23, 2004 through December 31, 2004, reopening City Hall for business on Monday, January 3, 2005.

Staff requests City Council/Agency Board direction regarding your November, December and January meeting schedule. The City Council/Redevelopment Agency may wish to consider adjusting its meetings during these three months, as deemed appropriate. Attached to the staff report is the calendar for the months of November and December 2004 and January 2005 for Council/Redevelopment Agency reference.

FISCAL IMPACT: None.